

TAXATION IN IOWA

HISTORICAL SKETCH, PRESENT STATUS AND
SUGGESTED REFORMS

BY

F. H. NOBLE, A.M., LL.B

Submitted in partial fulfillment of the requirements for the
degree of Doctor of Philosophy in the Faculty of
Political Science, Columbia University

New York
1897

TAXATION IN IOWA

HISTORICAL SKETCH, PRESENT STATUS AND
SUGGESTED REFORMS

BY

F. H. NOBLE, A.M., LL.B

Submitted in partial fulfillment of the requirements for the
degree of Doctor of Philosophy in the Faculty of
Political Science, Columbia University



New York

1897

Press of Philip Cowen.

CONTENTS.

	PAGE
PREFACE	5
CHAPTER I. Iowa under Michigan and Wisconsin	9
CHAPTER II. The General Property Tax	15
CHAPTER III. Assessment	25
CHAPTER IV. Levy	43
CHAPTER V. Collection	61
CHAPTER VI. Taxation of Corporations	75
CHAPTER VII. The Inheritance Tax.	86
APPENDIX	91
BIBLIOGRAPHY	93
INDEX.	

PREFACE.

Almost the entire state and local revenue in Iowa is now obtained through the general property tax. The corporation tax has been applied to insurance and express companies, and is at present two and one-half per cent and one per cent respectively on their gross earnings. A collateral inheritance tax of five per cent was imposed by the last legislature. As yet, however, taxes are chiefly charges on property. The bodies having the power of appropriation in state and local affairs, levy a certain number of mills on each dollar of the assessed valuation. This is called the rate of taxation, and while it is fifty-three mills on the dollar in Des Moines it may be only twenty mills in a rural district. The per capita poll tax and the taxes on dogs are fixed in amount. Thus there are three modes of levy, namely: the percentage or earnings of corporations, the number of mills on the dollar of property, and the minor specific taxes.

The three events in the scheme of taxation, in their logical and chronological order, are assessment, levy and collection. There is a state tax of two and one-half mills levied in every county. For years the counties have been rivalry for low assessments. It seems to the writer that the only solution of this difficulty is the abolition of the state general property tax. Then assessments would affect only one county and they would rise to actual valuations. I have noticed in the instructions of the county supervisors to assessors this injunction: "the assessors are hereby ordered to assess all taxable property of every

PREFACE.

description at fifty per cent of its cash value." Such are the unwritten laws of the state, while the code expressly provides that all assessments of property "shall be at its true cash value." (Sec. 812.) What is the reason for this alteration of the legislative will by the local administrative board? At no time has the assessment in the state been at true values, and the gradual changing to a lower assessment has brought the valuation of personalty down to about twenty per cent, while that of realty is about forty per cent of the cash value. The local county officers are in closest sympathy with their constituents, or, as they may be termed, neighbors, and readily respond to the demand for a reduction in valuations. As far as raising the amount requisite for local expenditure is concerned, this confers no benefit, as the rate is simply increased. But the rate for state purposes is fixed, and if a county can reduce its valuation one-half, while other counties assess at actual values, the property owners in that county just escape the state tax to that extent. The motive for this reduction, which exists in every county, would be removed if the state could secure its revenue by some other means than the general property tax. It could make the inheritance tax applicable to direct heirs, and devote all railway taxes to state purposes, in lieu of surrendering to the localities the general property tax.

Reforms in taxation have been especially discussed by the last three legislatures. The Twenty-fourth General Assembly appointed a Revenue Commission in 1892, consisting of Messrs. A. N. Poyneer, C. E. Whiting, C. A. Clark and August Post. The same year Mr. Poyneer resigned, and E. C. Lane was appointed by the executive council to fill the vacancy. In July, 1893, this commission submitted its report, which was not considered by the Twenty-fifth or Twenty-sixth General Assembly on account of not having time. The special session of 1897, called for the purpose of adopting a new code, will have these problems to

PREFACE.

determine, and it is hoped that the Legislature will have enough time to consider well the chapter on Taxation.

The author desires to express thanks to the following persons and institutions for aid in collecting the material for this volume:--

Hon. George W. Jones, who was the territorial delegate and first senator from Iowa; Hon. Henry Lathrop, curator of the State Historical Society; Professor F. J. Goodnow, Professor Richmond Mayo-Smith, Professor F. H. Giddings, Professor E. R. A. Seligman, and Dr Max West, New York City; Professor Isaac Loos, Iowa City; the county treasurer in Polk, Guthrie, Iowa, Johnson, Lee, Scott, Dubuque and Des Moines counties; the various New York libraries and especially to the Bar Association.

F. H. NOBLE.

New York City.



Digitized by the Internet Archive
in 2026

CHAPTER I.

IOWA UNDER MICHIGAN AND WISCONSIN.

Prior to 1834 no taxes were collected in the territory which now constitutes the state of Iowa ;¹ during the preceding fourteen years there existed here the anomalous condition of no local constitutional government. From 1812 till 1820 it had been a part of the territory of Missouri, but in the troublous times of the Compromise no mention was made in the debates of congress as to what was to be done with the territory north of that state. This fact was not of much practical importance, however, as officers of the United States were in the territory fighting the Indians and concluding treaties with them.² Up to this time there were only a few scattered settlements among the Indians, who were led by the hostile chief Black Hawk. But in 1837 the beauty and fertility of the district of Iowa became known in Kentucky and elsewhere, so that settlers rapidly arrived. One of the most interesting features of this settlement was the Claim Association, whereby allotments of land were protected, and "jumping" of claims prohibited by mutual contract, until the government land office was opened.³

By act of congress, June 28th, 1834, all that part of the United States north of the state of Missouri and west of the Mississippi river was attached to the territory of Michigan for the purpose of temporary government, and the same

¹ A personal letter from the late Hon. George W. Jones, and county records.

² See Appendix.

³ B. F. Shambaugh, "The Claim Association of Johnson County."

laws, rules and privileges were made applicable to the whole territory.¹

In order to determine the manner in which the first taxes were assessed in Iowa, it is necessary to seek the prior laws of Michigan. The government at Detroit was a practical absentee, and as communication and transportation were difficult, no territorial revenues were obtained from the distant settlements, where the claims to land rested on Indian contracts instead of governmental title.

In 1833 the Michigan legislature levied a territorial tax on commission merchants of \$12; on merchants and traders in ardent spirits, \$8; on tavern keepers, \$5, and on peddlers, \$10. These dues were collected by the county sheriff, who received a commission of five per cent, and forwarded the balance by the clerk to the territorial auditor, who was the superintendent of taxes.² The attorney-general and district attorney were to prosecute any sheriff derelict in his duties, and might recover of him a fine not exceeding \$100, before any justice of the peace, if he should accept a fee from any person without granting the proper license.

As early as 1829 every voter was required to swear or affirm that he had been rated and had actually paid a territorial or county tax in Michigan.³

Prior to the extension of Michigan beyond the Mississippi river, a board of three supervisors existed in the county of Iowa. It included that part of the present state of Wisconsin located east of the "Ouisconsin" river, then a part of the original Michigan Territory.⁴ One supervisor was elected by each township, and a majority of them could levy taxes to the extent of one per cent of the assessed value of the property.⁵ The school directors could levy a tax

¹ U. S. Stat. at Large, IV. 701.

² Laws of the Ter. of Mich., April 22, 1833.

³ Laws of the Leg. Council of Mich., October 7, 1829.

⁴ The population of this district, Oct. 2, 1834, was 2,620.

⁵ Act of March 6, 1833.

for a school-house, and had the authority to exempt any persons in the district who were so far removed that they received no reciprocal benefits. The director apportioned this tax according to one's property; but the tax for the payment of the teacher was assessed according to the whole number of days one's children had attended school, and no one was allowed to attend if this tax was unpaid, except children of the indigent, whose expenses were paid from the tax on property. The taxes for fuel and repairs were also assessed in proportion to the number of children sent to school.¹

The Legislative Council of Michigan, in 1833, enacted a law that a farm lying in two townships should all be taxed in a township where the owner's dwelling was located.²

In a law, known as "An act to lay off and organize the counties west of the Mississippi river," approved September 6th, 1843, the council provided that the territory added to Michigan by congress in the act of June 28, 1834, and situated north of a line to be drawn due west from the lower end of Rock Island to the Missouri river, should constitute a county and be called Dubuque; it was also constituted a township named Julien in honor of Julien Dubuque, the first white settler; the seat of justice was established at the village of Dubuque, until it should be changed by the county judge. That part of the territory south of the above line was constituted a county called Demoin, consisting of the township called Flint Hill; the location of the seat of justice was not fixed, but left to the determination of the county judges. A county court was provided for each county, to convene in April and September annually; all laws in force in the county of Iowa not locally inapplicable, were extended over the new counties. An election was fixed for the first Monday of November, 1834, as follows: in Dubuque County it was

¹ Act of April 13, 1833.

² Act of April 17, 1833.

to be held at Sorimer's store in the village of Dubuque; at Gehon's store in the village of Peru; at the dwelling house then occupied by Hosie T. Camp near the head of Catfish Creek; and at Lore's dwelling house on the "Mukkokette" (Maquoketa). The electors present at those places, between the hours of ten and twelve on that day, were to choose three persons to conduct the election.¹

One assessor was elected in each county, to assess the real and personal property, which was listed to the person in possession; the assessor then met with the county board of supervisors to equalize the assessments, at which time any individual might have his valuation reviewed and corrected. Then the assessor gave the list to the township clerk or clerks if there was more than one township in each county; he received two dollars per day compensation. The board of supervisors then levied all the taxes for county and township purposes.

The Territory of Wisconsin, including Iowa, was separated from Michigan July 4, 1836,² and the laws of Michigan were adopted *in toto*.³ Demoin county was divided into Lee, Van Buren, Demoin, Henry, Louisa, Muscatine and Cook counties; and the debt of the original county was apportioned among them in proportion to the assessed value of each.⁴ The legislature adopted the system of three commissioners for each county in 1837.⁵ Dubuque county was divided the same year into Clayton, Fayette, Dubuque, Delaware, Buchanan, Jackson, Jones, Lynn, Benton, Clinton, Cedar, Johnson, Keokuk, and Scott, and the debt was apportioned as in Demoin County.⁶

If a stranger fell sick and died without money, it was the duty of the overseers of the poor to care for him, give decent

¹ Act of September 6, 1834.

² Act of July 3, 1836; U. S. Stat. at L., V. 10.

³ Act of Dec. 8, 1836, Ter. Leg. of Wis.

⁴ Act of Dec. 7, 1836.

⁵ Act of Dec. 20, 1837.

⁶ Act of Dec. 31, 1837.

burial and pay the expenses out of the county treasury, although the person had no settlement there, the period for acquiring which was fixed at twelve months.¹ All male inhabitants between the ages of twenty-one and fifty years, except those excused for good cause by the board of commissioners, were required to work public roads and highways two days in each year. Real estate was subject to a road tax not exceeding one per cent., but it might all be discharged by labor on the highways at the rate of two dollars per day, under direction of the road supervisor appointed by the commissioners. Those who refused to work were subject to an action of debt for the amount.² Counties were authorized to borrow money to build jails, and to levy a tax to pay the debt.³ The commissioners' levy was restricted to five mills for county expenses; agricultural implements and household furniture to the extent of seventy-five dollars were exempt. Liquor licenses were fixed at from five to fifty dollars; ferries were charged from five to twenty dollars; vendors of wooden or brass clocks were licensed at from one hundred to three hundred dollars. The sheriff collected the taxes, and the purchaser at a tax sale received a deed in two years, unless redeemed with fifty per cent annual interest.⁴ Collectors were required to assess property omitted on the regular list, and received a commission of five per cent. The county commissioners might alter the assessment of individuals.

The city of Burlington was incorporated on the 19th of January, 1838, and the mayor and aldermen were given power to levy and collect taxes on real and personal property; the levy being limited to two and one-half mills, except when authorized by a vote of the electors; and it was provided that no tax other than an *ad valorem* one should ever be

¹ Act of Jan. 3, 1838.

² Act of Jan. 15, 1838

³ *Id.*

⁴ Act of Jan. 18, 1838.

levied;¹ in all subsequent charters issued to cities, a similar provision was inserted.

The territorial revenue was obtained by requiring the county treasurer to pay over to the territory five per cent of the taxes levied by the board of commissioners, to be paid out of the first collection; this latter provision was a very important one, as under the first tax levied in Scott County of \$891.40 only \$239.03 was collected.²

June 12th, 1838, congress separated Iowa from Wisconsin, to go into effect on the fourth of July following, and President Van Buren appointed Robert Lucas, of Ohio, governor of the new territory.³ The laws of Wisconsin were continued in force in Iowa as far as applicable; the Wisconsin legislature was sent back from Burlington to Madison, and a new Council and House of Representatives was elected in Iowa, whose laws we will now proceed to consider.

¹ Act of Jan. 19, 1838.

² *Id.*; Records of Scott County, Proceedings of the Board of Supervisors.

³ Act of June 12, 1838; U. S. Stat. at L., V. 10.

CHAPTER II.

THE GENERAL PROPERTY TAX.

As Professor Goodnow says, "the age that has passed was one of constitutional reform, but the present age is one of administrative reform." The administration of taxes in Iowa should be revolutionized.

The present system briefly described might seem almost perfect to a stranger. The state legislature determines the probable amount it will require for biennial expenditure, and apportions it among the counties according to their ability to pay, as shown by the returns of their taxable property real and personal. The county supervisors, whose duty it also is to look after public highways, bridges and other county matters, determine how much they will require, and this is similarly apportioned with the state requisition among the cities and townships, which in turn ascertain the amount required to meet their local expenditure; and the county treasurer collects the whole sum in one or two payments each year. Then the county retains its share and pays the proper quotas to the state treasury and municipalities.

The first natural impulse of most men when called upon to devise a system of direct taxation is to propose a general property tax, and to make a valuation of all property of every kind, taxing every person in precise proportion to his share. Our law divides property into two classes, real and personal, or immovable and movable. The difference between these two species of property is so great, that even slight consideration raises a doubt of the same rules of taxation being equitably applicable to both.

The code provides that all property shall be assessed "at its true cash value, taking into account quality, loca-

tion and natural advantages." The revenue commission appointed by the Twenty-fourth General Assembly in 1892, found realty assessed in some counties at seventeen per cent of its value, while it was sixty per cent in others, and personalty, when assessed at all, averaged about thirty-six per cent.

The general property tax furnishes most of the state and local revenue; it is a very old method of taxation, but this is not a sufficient reason for its retention under present circumstances. England abolished the empty form, as far as personal property is concerned, in 1833; France abolished it in 1790 with other mediæval customs, and the Florentine general property tax had shown such abuses that it was repealed as early as 1495. In every state in the Union the attempt has been made to tax personal property as well as realty, directly upon its appraised value. In some states this attempt is still maintained by stringent legislation, in others the law is crude, loose and easily evaded as in Iowa. In every state there is a clamorous demand for improvement. The system, never a good one, is now too antiquated to be longer tolerated. New ways and means, chief among which are corporations and great inheritances, have developed in the financial world, and the old regime must cease to claim the support of even the most conservative. Financial ability is the true measure of just taxes, and the general property tax has proved itself incompetent to ascertain this basis.

The state treasurer, in his reply of February 7th, 1896, to a resolution of the legislature asking for information concerning the revenue, gives two reasons for the embarrassment which he experienced in paying warrants: first, payments of county treasurers are not made to the state until after the state's obligations are due; second, there is a decreasing assessment, and an increase in delinquent taxes, which reach \$100,000 annually, and aggregated July 1, 1895, \$842,625 86. The legislature is recommended to change the

date of payments to the public institutions, where appropriations have steadily increased during the past ten years. The shrinking tax basis of the state appears clearly from the figures he gives as follows :

Population in 1885	1,753,980
Population in 1895	2,058,069
Increase, 16.06 per cent.	
Assessment of realty and personalty, 1885 . .	\$489,660,081.00
Per capita	279.17
Assessment of realty and personalty, 1895 . .	558,985,292.00
Per capita	271.66
Increase of assessment, 14.15 per cent.	
Decrease per capita	7.51
or 2.69 per cent.	
Assessment of personalty, 1885	103,372,905.00
“ “ “ 1895	100,493,479.00
Decrease, 2.78 per cent.	
Assessment of realty, 1885	363,614,837.00
“ “ “ 1895	413,970,588.00
Increase, 17.06 per cent.	

These statistics seem to show that there has been a decrease in assessable property. Realty as a matter of fact has greatly increased in value, but its assessment shows but a meager improvement. Especially has tangible and intangible personal property increased, as may be seen by inspecting the ninth, tenth and eleventh censuses of the United States; but it has decreased on the assessment books. “The rates of assessing and valuing property,” says the treasurer, “vary in the counties in bewildering confusion and result in endless difficulties, and consequent losses to the state. There ought to be a uniform rate of appraisement, a common method and manner of assessing real and personal property the whole state over. As it is, one township puts its rates and totals as low as possible, each trying to shift the burden upon the others in the county. This same performance is repeated with regard to the state, one county tries to unload a part of

its just burdens onto the others, by putting the amounts of its real and personal property as low as it can. Meantime every other county is trying the same thing. This means constant annoyance and waste of time and money to the state, and higher taxes upon those who are honest and have to pay the taxes in the end. A radical reform in the administrative means and methods of appraising and assessing property is most important. Our taxing machinery needs to be remodeled throughout if we are to see any marked improvement in the future."

The legislature is rightly conservative, but when such a situation is confronted, it should be capable of investigating the ultimate source of trouble and have the courage to attack the danger.

The general property tax of $2\frac{1}{2}$ mills for the biennial period ending June 30th, 1895, was \$2,282,052.24, or an annual average of only \$1,141,026.12 for the state. The local taxes for 1894 amounted to \$17,129,057.14. The state taxes could be secured from inheritance and corporation taxes, as the taxes on railroads alone now exceed the entire sum yielded by the $2\frac{1}{2}$ mill tax; while land should be the basis of the local revenue.

There is a robbery of the many for the benefit of the few when the poor pay taxes and the rich escape; and a few are often compelled to bear the burdens of many, when those owning tangible property cannot evade the tax collector, while those who have intangible property may secrete it, so that the taxes become a "burden on the conscience of the many" and a charge on the purse and prosperity of the few. Any tax is bad which can be easily evaded by fraud or falsehood, and is, therefore, only paid by the honest and truthful; any tax is bad which unnecessarily hinders the increase of wealth and comfort among the people as a whole.

Young as the state is, it has already begun to experience the serious evils which have never failed to grow out of a revenue system such as that now in operation. That the

evils are real is evidenced by the wide-spread discontent and the prevalent sense of inequality and injustice, of which every tax-payer is conscious to a greater or less degree ; by the universal heavy burden of county and municipal taxes ; by the large and increasing taxes delinquent, and the debts accumulating in almost every city and county. One of the chief errors has arisen from the belief that equality requires everything to be taxed directly.

Would the exemption of personal property not approach the single tax in its severity, and result in veritable land nationalization ? Its very purpose would be to relieve the farmer of the unequal burden now resting upon him. His personal property is the most tangible and visible in the state ; his implements, live stock and produce are always known to the assessor.

Personalty is often assessed at greater amounts in rural counties than in cities. Taking our figures from the eleventh census we compute that Polk county in which Des Moines, the largest city in the state, is situated, assessed personal property at \$63 per capita ; Dubuque county, including the city of Dubuque, \$66 ; Union county, including Creston, \$67 ; Clinton county, including Clinton, \$60. Compare with those urban counties the following rural ones in which we would expect less wealth especially in personalty ; Guthrie county, in which the assessment of personalty, excluding real estate, was \$79 per capita ; Dallas county, \$88, and in Dickinson County, whose population is only 4,328, \$76. This shows that farmers actually pay more taxes per capita than residents of cities, although, there is doubtless more personal wealth in cities, where, however, it is of such a character, such as bonds, money and mortgages, that it may be easily concealed from the assessor. Therefore it is plain that a removal of the tax on personal property would benefit the farmer. Furthermore, as it would encourage investments in this state and invite capital, it would make money more plentiful, rates of interest less, and result in a benefit to all classes.

A great proportion of the personal property is withdrawn from accessibility by the Federal government. It is manifestly unjust then to tax the other part. Much of it is not subject to state taxation¹; the exempt list includes most bonds and coupons, imported merchandise in the original package, and goods *in transitu*.

The revenue for local purposes may be raised mostly from a tax on real estate, which in cities largely derives its value from the character of the personalty in and around it. Fine furniture and jewelry would not be assessed under such a tax, but such articles usually are not taxed; they are merely unproductive wealth and yield no income from which taxes should always be taken. Land is not the only object remaining, because franchises bring their owners quite an appreciable income, and their disposition should be carefully guarded. When we ask that the general property tax on personalty be abolished, we do not recommend that persons whose wealth consists of personal property be exempted from the duty of defraying their portion of the public expenditure. But we do suggest that they should be reached in other ways, as, for instance, by a tax on rentals or some other indirect method of taxing the earnings of personal property.

A positive result of the specific taxation of personal property is to drive many of the middle classes from urban life. People who, by industry and frugality, have earned \$20,000 to \$50,000, and deem themselves in a position to live in comfort with their friends in the city, find the personal property tax such a burden that they wrench themselves from social ties and seek a home beyond the city limits. Any town or city in the land affords examples of this manifest result. The poor man is unable to move to the suburbs, and pays the city tax. It is a good rule "never to tax any-

¹ "The Taxation of Personal Property," John H. Ames, p. 17; Horace White, Appendix to Cossa's Taxation, p. 195; "History of the New York Property Tax," J. C. Schwab, p. 47.

thing that would be of value to your state, that could and would run away or that could and would come to you.”¹

There is, however, a popular feeling in favor of taxing everything, and a prejudice against the removal of taxes on personality. If the general property tax is to remain, the assessment should be at full cash value as provided in the present law. It makes no great difference in the tax, when the assessment is at fifty per cent, and the levy twice as high, which is the universal practice in the state now, except that this allows more room for a lack of uniformity in assessing various counties; some making the assessment forty per cent, some fifty, and some sixty. The great demand is for uniform assessments at true cash values, and the quickest way to secure such honest valuations would be to abolish the state tax which is two and seven-tenths mills for this year, thus removing the motive for counties to reduce their assessments, which they place as low as possible, in order to reduce their quota of the state tax.

The general tendency is to remove taxes from the poor; but the most reliable figures indicate that large estates in personal property to-day pay proportionally less than smaller estates. It is not the intention to tax the poor heavily, but it is desirable that the burden of taxes be placed on those who have the ability to bear it.

A State Tax on Liquors and Tobacco.—If the tax on personal property should be abolished, the state might partially replace it by a license tax on the sale of liquors and tobacco. This means might be utilized by the state as a combined police and revenue measure.

All taxes from the manufacture and sale of these articles now accrue to the municipalities and Federal government; the county and city equally divide the mulct tax, and the Federal government retains all the internal revenue. Some

¹ Enoch Ensley, “The Tax Question, An Introduction to the Study of Sociology,” p. 29; John H. Ames, “Local Free Trade,” p. 8.

of the states have already found this a fruitful source of income. It is estimated that a proposed state tax of fifty cents per barrel on beer manufactured in New York would yield \$4,000,000 annually.

A State Income Tax.—The prevalence and growth of taxes on the receipts of corporations, show a tendency toward the adoption of the income tax as a means of providing at least a portion of the state revenue. The constitutions of six states permit such taxes, namely, Virginia, North Carolina, Tennessee, Texas, California and Massachusetts. In a few of these states we actually find income taxes, although they yield but little or no revenue. In Virginia however the revenue derived from this source in 1890 amounted to \$51,154; all incomes over \$600, except state salaries, are subject to a tax of one per cent, deductions being allowed for losses, taxes, rents, and expenses incurred in cultivating land.¹

Professor Ely thinks the income tax would be as difficult to collect as the personal property tax, and cites Prussia with her fine civil service, where some trouble is found in assessing incomes. The plan however, seems to be a success there, and has existed since 1851; the rate in the new law of 1891 is four per cent on incomes over 100,000 marks, and gradually decreases on smaller amounts. In 1890-91 it yielded 4,000,000 marks more than the Grundsteuer and exceeded any other tax in the kingdom.²

The income tax was introduced into Japan in 1887, where it is one per cent on incomes from 300 to 1,000 yen; 1,000 to 10,000 yen—1½ per cent; 10,000 to 20,000 yen—2 per cent; 20,000 to 30,000 yen—2½ per cent; 30,000 yen or more—3 per cent; and the revenue from this source was 372,422 yen in 1893.³

¹ Virginia Constitution, Sec. 4. Acts of 1883-4, ch. 450.

² R. T. Ely, "Taxation in American States and Cities," p. 148; J. A. Hill, *Journal of Economics*, VI, 492.

³ G. Droppers, *Quarterly Journal of Economics*, VI, 492.

The famous Federal income tax law of 1894 was declared unconstitutional by the Supreme Court, on the ground that taxes on real estate and personalty or their incomes were direct taxes, and it could not be enforced as congress had not apportioned the tax among the states.¹

In England an income tax of 10 per cent was imposed by Pitt in 1799 but repealed in 1802; it was re-enacted from 1803 to 1815 as a war measure at first 5 per cent and then gradually rising to 10 per cent. In 1842 it was established as a permanent feature of the budget by Sir Robert Peel at seven pence in the pound, or about three per cent; but since 1877 it has averaged six pence, yielding in 1893 \$67,000,000. It is applied at the source of the income and for that purpose is divided into five schedules, viz.: A, B, C, D, E, which apply to incomes from the ownership and possession of real estate, interest and annuities, trades, and salaries payable by the queen.²

Many taxes are drawn without regard to the principle of equality, for example the excise; but income taxes do lay some claim to merit as measuring an individual's ability, and making his sacrifice equal as compared with that of everyone else. What one receives, less his expenses, indicates the sacrifice imposed by a tax, so that in an ideal income tax, an exemption is usually allowed in order to cover the minimum cost of living.

In view of the fact, however, that under present conditions of American political and industrial life, a state income tax would arouse keen opposition, and could be enforced only with great difficulty, it is worthy of consideration whether it would not be wiser to devise some scheme of reaching

¹ *Pollock v. Farmers L. & T. Co.*, 157 U. S. 499; rehearing, 158 U. S. 601; see U. S. Stat. at L., I. 373; *Hylton v. U. S.*, 3 Dall. 171, carriage tax; *Pacific Ins. Co. v. Soule*, 7 Wall. 454, premiums; *Veazie Bank v. Fenno*, 8 Wall. 533, state banks; *Scholey v. Rew*, 23 Wall. 311, inheritances of real estate; *Springer v. U. S.*, 102 U. S. 587, incomes.

² Finance Act of 1894, 57 Vict., ch. 30, sec. 33; L. R. 31, Stat. 74.

incomes indirectly, by a system of taxes on the product of property, using outward signs and criteria as a rough test of the taxable income. France, for instance, has for many decades been employing such an indirect or roundabout system with reasonable success.

Conclusion.—Equality, certainty, convenience and economy are maxims which should prevail in taxation, as Adam Smith pointed out. No tax can fulfill perfectly all these requirements, but the nearest approach to them is desirable in order to minimize injustice. Such a system would grant to the Federal government customs duties, and internal revenue; it would raise the state requirements by an inheritance tax, a corporation tax, and what might be called indirect income taxes; while local taxes should be levied on real estate. Numerous other taxes, such as those involved in police measures, might also be levied as occasion should require. The inheritance tax, as it produced over \$2,890,000 in New York and Pennsylvania in 1894, will be an important factor in future budgets.

CHAPTER III.

ASSESSMENT.

The first step toward the collection of the general property tax is the assessment; that is, a list of the property is made, and its valuation is fixed at a certain amount, upon which the rate, as levied, may be computed.

The duties of an assessor lie at the very foundation of our government, as it is from his assessment that we derive the principal revenues which keep its complex machinery in operation; he takes the initial step, and more than any one else apportions the individual shares of the burden of taxes.

In the early history of Iowa one assessor was elected for each county, but the position was made a township and city office in 1853; at that time the assessors classified the property and constituted the board of equalization.

They are now elected in even numbered years at the township and city elections, and receive two dollars for each day of eight hours while engaged in the performance of their duties.¹

Manner of Assessment.—The board of supervisors at its January meeting classifies the property in the county and delivers a description of each class to the assessors on January 15th, with blank assessment books.²

¹ Laws of Ia. Ter 3d Sess. ch. 70, Jan. 15, 1841. The assessor collects statistics in odd numbered years; 24 G. A. ch. 57. It is not necessary that the assessor view all property; he may send deputies; but he must ratify and approve the list; *Beeson v. Johns*, 59 Ia. 166. In cities having over 10,000 inhabitants the council may provide for three assessors, and may divide the city into assessorial districts.

² Code, Sec. 821. The following is the classification made by the board of supervisors of Guthrie county, Iowa: "improved farms, partially improved farms, unimproved farms; stallions, thoroughbreds, grades; horses, three

On the third Monday in January the assessor begins his work. Any one who refuses to assist him in listing property, or refuses to make oath to his return, is liable to a forfeit of one hundred dollars, which may be recovered in the name of the county, and if it appears that the tax-payer has omitted some of his taxable property, it is then listed at double its value.

The Oath.—An oath must be administered to each person assessed, and any refusal should be noted in the assessment book.¹ In this most assessors neglect their duty; the oath is not administered, neither is the whole property returned nor the penalty imposed.

The Description.—The assessment must be certain in designating the valuation, the description of the property, and the person charged. But mere circumstantial errors in the details of making up the list will not void it as a basis of taxation, and "40 acres fractional" is definite enough without stating the exact number of acres.²

years old and upwards, one year old; mules—three years old and upwards, one year old; asses; bulls—thoroughbreds; grades; cows—thoroughbreds, grades, three year old and upwards; heifers—two years old, one year old; steers, fat, three years old and upward, two years old, one year old; oxen—per yoke; hogs—over six months old; sheep, per head; dogs three months old and upwards, male and female; moneys and credits, bank shares, capital employed in manufacturing, merchandise, public stocks and loans, household furniture including gold and silver plate, musical instruments, private libraries over \$300, carriages, threshing machines, all vehicles, farming utensils, machines, machinery, mechanics, tools, professional libraries over \$300, bicycles." Changing the classification of property in June after the assessment is illegal; it must be made in January for the guidance of assessors, *McCutcheon v. Supervisors, (Ia.)*, 63 N. W. Rep. 455.

¹ *Marion Co. v. Kruidenier*, 72 Ia. 92; the assessor is required by statute to inform the owner before administering the oath that he may appeal to the board of equalization if he feels aggrieved, and this fact must appear before the penalty of double assessment can be enforced; *Marion v. Galvin*, 73, Ia. 18; liable for listing property in the wrong name, *Parkinson v. Parker*, 48 Ia. 667.

² *Conway v. Younkin*, 28 Ia. 395. The initials of the given names, or the name by which the owner is ordinarily known, is sufficient. In Cali-

The description of property is always made by locating it according to the congressional survey in a certain part of a township. There are ninety-nine counties in Iowa, the regular size of each being twenty-four miles square. The counties are usually divided into sixteen townships, which correspond to the "towns" in New England. Ordinarily they are six miles square. Any township in Iowa may be located by its number east or west of the fifth principal meridian, which runs thirty-five miles west of the easternmost point in the state, and by its number north of the base line in Arkansas. Each township is divided into thirty-six sections, each of which is one mile square. The sections are always numbered from the northeast corner of the township; and each section is divided into quarters containing 160 acres

160 A x	Thus the space marked X contains forty acres, as the whole figure represents one section, and is described in the tax-list as the N. W. $\frac{1}{4}$, of the N. E. $\frac{1}{4}$, of section 33, of township 78 north, range 32, west of the 5th P. M. In cities real estate is located by the block and lot numbers. In the description of the land the buildings and fixtures are included.
--	---

The assessment must be made by the right officer; thus, if an assessor elected for an incorporated town lists land not situated within the town limits, it is void, and a sale based on such an assessment is invalid.¹

Omissions.—An omission of some of the subjects of taxation, while it raises the levy, does not invalidate the assessment.

The auditor follows the transfer of all real estate in the county and is required to keep a transfer book, index book,

for the absence of a dollar sign renders the assessment void, but the Illinois courts are not so strict; *People v. Hastings*, 34 Cal. 571; *Elston v. Kennicot*, 46 Ill. 187.

¹ *Baily v. Fisher*, 38 Ia. 229.

and book of plats for this purpose ; each tract in the county is shown on the plat book, which must be drawn on a scale of not less than four inches to the mile, and on each parcel of land the auditor writes with a pencil the name of the owner.

The county treasurer is required to assess any real property subject to taxation which may have been omitted by the assessor, board of equalization or county auditor, and to collect the taxes thereon, but he must make his assessment within two years after the tax list is delivered to him.¹

Who May Be Taxed ?—Married women are taxed on their property although they do not vote for the assessing officers. The personal property of minors and lunatics is assessed to their guardians. Aliens must pay taxes on their property, and Indians are taxable unless exempt by treaty.²

Cities have power to regulate auctioneers and transient merchants, but can not tax a resident merchant for sales by an auctioneer.³ Code Section 462 gave Iowa towns and cities the power to tax transient merchants, but it was declared unconstitutional as discriminating in favor of resident merchants against others of the state.⁴

Each partner is liable for the taxes of the firm.⁵ Agents and commission merchants are personally liable for the taxes of money, notes and personal property under their control.⁶ Under a lease providing that tenant shall pay "all taxes

¹ *Railroad v. Carroll Co.*, 41 Ia. 153; Code, Sec. 851.

² *Cherokee*, 11 Wall. 616.

³ *Decorah v. Dunstan*, 38 Ia. 96.

⁴ *Marshalltown v. Blum*, 58 Ia. 184; *Burlington v. Bumgardner*, 42 Ia. 673; *Pacific Junction v. Dyer*, 64 Ia. 38.

⁵ Code of '51, Sec. 463. Taxes due on personal property of a partnership are a lien on the real estate subsequently acquired by any of its members, but is subject to prior mortgages on the realty; *Bibbins v. Clark*, 90 Ia. 239; *Given and Rothrock, J.J.*, dissenting; overruling *Trust Co. v. Young*, 81 Ia. 732; Code, Sec. 865.

⁶ Code, Sec. 817; *Hutchinson v. Board*, 67 Ia. 182.

assessed against the property " he is liable for special assessments for paving and curbing.¹

The undivided property of a deceased person may be assessed to the heirs without enumerating them.² In 1868 (*McGregor v. Vanpel*, 24 Ia. 436), it was decided that a decedent's personalty was taxable in the county of his late residence; but in the recent case of *Burns v. McNally* (90 Ia. 432, 1894) it was held that where two executors hold personal property in different townships, neither of which was the residence of the decedent, the property which each executor holds is taxable where he lives.

Bankers may be assessed in the bank's name. Private banks are taxed on the average amount of moneys and credits in possession during the year previous to the assessment.³ Choses in action are taxable in the hands of the creditors.⁴

Failure to assess property in the true name of the owner is fatal, except that it may be assessed to "unknown owners," when not comprising more than one town lot or forty acres of land.⁵ Where the same property is assessed to an unknown owner and also to the real owner, the former assessment is invalid and a sale thereunder is void.⁶

What is Taxable? Personal Property.—The general rule is

¹ *Casady v. Hammer*, 62 Ia. 359.

² Code, Sec. 806.

³ *Campbell v. Centerville*, 69 Ia. 439; Code, Sec. 812. In Illinois pawn-brokers must pay taxes upon the fair cash value of all property held by them in pledge; Ill. Annot. St. 31. The revenue bill as submitted to the XXV. G. A. by the Iowa tax commission provided that private banks should furnish a sworn statement of the amount of cash on hand and in transit or in the hands of correspondents; from the sum of these and the bills receivable the deposits would be deducted and the balance taxed as personal property. If the bank was owned by more than one person the net assets being divided by the number of shares would give the value of each to be assessed to their respective owners.

⁴ *Bonapart v. Tax Court*, 104 U. S. 592.

⁵ *Burdick v. Connell*, 69 Ia. 458; *Griffin v. Tuttle*, 74 Ia. 219.

⁶ *Nichols v. McGlathery*, 43 Ia. 189.

to assess all personalty annually in the township where the owner resides.

SITUS.—A person transacting business in more than one county is taxable on his personal property where it is located, but that which does not pertain especially to the local business is taxable at his principal office. Personal property for the purpose of taxation thus usually follows the situs of its owner. Mortgages are personalty and are taxed at the domicile of the owner.¹

LIEN.—A tax on personal property becomes a lien against the owner from the time of its assessment, and he is not relieved by removal or by the sale of the property, but such taxes are not a lien upon personal property.² They are a lien upon the owner's real property even when it is acquired subsequent to the assessment.³

AMOUNT.—Depreciated bonds and notes are assessed at their cash value or the amount which the owner thinks can be collected on them.⁴ Merchants, jobbers and manufacturers, as a rule, take their inventory on January first as a basis of their return to the assessor, and are assessed for the average amount on hand during the entire previous year, or if they have not been in business that long then on the average for the time that they have been in business.

A bill was introduced in the legislature of 1896, providing that assessors should stamp all taxable bonds, notes and interest-bearing instruments, and that they should not be received as competent evidence otherwise; and providing that any one attempting to pass such unstamped negotiable paper after the legal time of assessment, should be subject to a fine of fifty dollars.

The law requires assessment of personalty and realty to be at the true cash value, but by the sanction of custom

¹ *Rhyno v. Madison Co.*, 43 Ia. 632.

² *Howard v. Strother*, 71 Ia. 683.

³ *Cummings v. Easton*, 46 Ia. 183; *Castle v. Anderson*, 69 Ia. 428.

⁴ Code, Sec. 813, 816.

which has obtained throughout the state for a long series of years, it has usually been forty per cent on the average, and the Ways and Means Committee of the last legislature recommended a bill to make the legal assessment twenty-five per cent of the true cash value.

The inhabitants of any city or county know that if they now attempt an assessment at the true cash value, they would have to pay the same rate as the rest of the state is paying on one-half of their valuation. Therefore no such changes can be expected. No change in the law would accomplish the result; so the system, which in reality is the apportionment of state taxes among the counties according to their assessed valuation, should be abandoned. The tax on personalty has become a tax on ignorance and honesty; it is only paid by those who are not informed of the means of evasion, or who, by a fine sense of honor, will not take advantage of them. The ordinary honest man would not hesitate to pay his fair share of the burden, but even he does not desire to pay the taxes of other men; such a tax puts a premium on perjury and a penalty on integrity.

In 1894 the average assessed valuation of swine varied from 54 cents in Sioux county and 50 cents in Carroll county to \$3.03 in Taylor county and \$3.03 in Davis county. Cattle were assessed in Cass county at \$15.61 on the average; and at \$4.13 in Buena Vista county. In Calhoun county, the standard of horses is fully up to the average, but the assessed valuation there was \$5.83, while in Marion county it was \$23.14. None of these assessments are equalized by the state board. In 1895 it added forty per cent to the reported assessed valuation of real property in Carroll county, an increase of \$2.36 per acre. This shows what extreme inequalities are prevalent. The board's activities in equalizing the county assessments were confined, however, to raising the valuations of real property in eight counties 4 per cent, in fourteen counties 10 per cent, in two counties 15 per cent, in one county 25 per cent, and in one 40 per cent,

.

while they reduced the valuation of one county 15 per cent, of one 10 per cent, and of two 5 per cent. Altogether the board increased the state valuations of realty and railroads from \$551,599,152 to \$559,650,241. The valuation of live stock decreased from \$46,982,241, on January 1st, 1894, to \$38,228,141, on January 1st, 1895. The county of Dubuque, with only one-half the population of Polk, wherein Des Moines, the state capital, is located, actually returned \$75,000 more personal property, on which the 2½ mills were paid for state revenue; the equalized value of land and town lots in Dubuque was only one-half that of Des Moines, which evidently should be about the proportion of personal assessment also; similarly Woodbury county was assessed for personal property \$4,866,879 compared with \$3,115,532 in Polk county.¹

Real Property.—The same rate of taxes is levied on realty and personalty, the same assessor fixes the values, and the taxes are collected in the same manner.² The owner of the legal title is assessed, but one may own the surface of the land and another the coal beneath, and each is assessed with his interest.

PERIODICITY.—The assessment of real property in Iowa is now made biennially in odd years. In Illinois, Minnesota and most other states it is made annually, although in Vermont it is every four years. in Michigan every five years, and in Ohio only once in every ten years.³

¹ The average assessed valuation of cattle in the state has gradually decreased from \$12.87, in 1870, to \$4.96, in 1895; horses \$12.67 to \$13.58, mules \$38.53 to \$15.43, swine \$3.09 to \$1.22; Auditor's Rep. 1895.

² The reported assessment of lands in 1895 was \$302,689,731, of town lots \$103,227,185. total \$405,916,916; this was equalized by the executive council and raised to \$413,970,588. The assessment of personal property was \$100,493,479. A bill was recently introduced requiring assessors to place in a column next to the valuation of each tract of land the price at which it was last sold.

³ Under the Code of 1851, in Iowa, all property was assessed annually.

SIRUS.—On the appeal of the Des Moines Water Company, which has its mains in two townships, it was decided that such property as pipes and mains, although real property, should be assessed only in the townships where the principal pumping station is located.¹

Bridge property is assessed as realty whether its interest is a leasehold or fee. An equitable interest in land is taxable.² Minerals and corn removed from the land the day before it is assessed become personalty.³

Swamp Land.—Certain counties own "swamp land," located in other counties, on which they are taxable by the county in which it is situated.⁴ This swamp land was granted to Iowa by the United States, under act of congress of September 28, 1850, as indemnity for swamp or overflowed land. It was then granted by the legislature to the counties on February 2d, 1853.

Exemption.—The following property is exempt from taxation: state university, agricultural college, and school lands; all property of the state, county, township, city, incorporated town or school district, including cemeteries, fire engines and public libraries; the grounds and buildings of literary, scientific, benevolent, agricultural and religious institutions, not exceeding six hundred and forty acres in extent, and not leased or otherwise used for pecuniary profit; and all other property leased to such institutions after the lease is recorded; the books, papers and apparatus belonging to such institutions and like property of students used for their education; money belonging to such institutions devoted solely to main-

¹ *In re* Des Moines Water Co., 48 Ia. 324; Capital City Gas Light Co. *v.* Charter Oak Ins. Co., 51 Ia. 31; Water Works *v.* Oskaloosa, 84 Ia. 407.

² Witherspoon *v.* Duncan, 4 Wall. 210. Agricultural College leaseholds after being held ten years are assessable on their value after deducting the amount necessary to acquire full title; Code, par. 2651.

³ *Middlesex v. Charleston*, 8 Allen, 332.

⁴ *Callanan v. Wayne Co.*, 73 Ia. 709; Code, Sec. 801.

taining them; farm produce of one year; private libraries not exceeding \$300 in value; the homestead not to exceed \$500 in value, of the widow of any Federal soldier or sailor who died in service or from wounds received in the civil war, provided that she owns no other real estate.¹

The board of supervisors may rebate the whole or a part of the taxes of any person whose buildings, crop, stock or other property, has been destroyed by fire, tornado or other unavoidable casualty, if his property has not been sold for taxes, or if the owner's taxes are not in default longer than thirty days at the time of the destruction; but the rebate is allowed only for the value of property not covered by insurance.²

In listing the amount of any "money or credits" which one owns, debts owing in good faith and liability as security for another, which one believes that he will be compelled to pay, may be deducted, but premium notes given to insurance companies cannot be deducted.³

Property *in transitu* from or through the state cannot be taxed, as that would be interfering with interstate commerce.⁴

Double Taxation.—The complex and differentiated forms of capital and industry often give rise to circumstances in which care must be used lest the same wealth be taxed twice by the same authority.

Personal property lying without the state is assessed on

¹ Code, Sec. 796.

² Code, Sec. 800; under the Revision no rebate was allowed if property was insured for over two-thirds of its value, and a release of two-thirds of the taxes was granted if the property was insured for less than two-thirds its value; *Crosby v. Floete*, 65 Ia. 370.

³ *First Nat. Bank v. Albia*, 86 Ia. 28.

⁴ Hence corn bought and collected into cribs at one place for shipment is not taxable; but if it is stored there to await the future course of the market or to escape taxation elsewhere the *transitus* will be considered at an end, and the property becomes taxable where found; *Ogilvie v. Crawford Co.* (Ia.), 2 McCr. 148.

the fiction that its situs follows that of the owner, but the difficulties of this procedure are evident.¹ If the property is permanently invested in another state it is usually taxed there. South Carolina excludes from assessment all property of residents located in another state, and Rhode Island exempts such as it taxes to non-residents. Indiana and Michigan do not tax such property if permanently invested; and Connecticut, Vermont and New Hampshire exempt it if it is taxed where situated. Kentucky, Minnesota, Maine and Massachusetts tax all such property when owned by residents, adhering to the legal fiction of its personal situs.

Iowa taxes personal property belonging to residents, but located in another state, and inconsistently taxes personal property of non-residents invested in this state. Interstate taxation is in about as chaotic a state as interstate commerce was a score of years ago.

Mortgages.—It is claimed that the mortgages on real estate should be deducted from its assessment, as otherwise there is a case of double taxation; the mortgagor is required to pay the taxes on the full value of the land;² he is paying taxes on the property he has in the land, and also on the property the mortgagee has in it; he is not only taxed on what he has, but also on what he has not, "on his ability and on his liability."

California, Oregon, Michigan and Massachusetts have tried the system of deducting mortgage indebtedness from the assessment of land, and the experience is not altogether

¹ Francis Walker, "Double Taxation," p. 106; Cook on Stock, Stockholders and Corporations, 569; Cooley on Taxation, 84. Citizens of the United States are entitled to the equal protection of the law in all states, so non-residents may not be taxed at a higher rate than residents; Const. IV, 2; but corporations are not residents, *Paul v. Virginia*, 8 Wall. 468. Treaties may extend this right to citizens of foreign nations.

² *Dayton v. Rice*, 47 Ia. 429. In Illinois alien landlords are forbidden to include payment of taxes as a part of the rent in farm leases; Annot. St. III, 62.

favorable. The state may tax the mortgage as real estate, and the mortgagor may pay the tax and deduct it from the interest payment. Mortgages provide that any tax upon them shall be paid by the mortgagor, but this difficulty might be obviated by a statute prohibiting such collusion and declaring null such agreements hereafter.

Such legislation would doubtless raise the rate of interest on this class of securities; no one would loan money on farms because the legal rate of interest would not allow sufficient margin to cover the possible taxes. The mortgage bonds of railroads having been deducted from the assessed value of their property, there would be no remainder. Here we find also one other objection to deducting mortgages, as the owners of land would grant mortgages to relatives in order to obtain the exemption. Even without this item, mortgages on real estate already exceed its assessed value; according to the eleventh Federal census, in 1890 the real estate mortgages in Iowa amounted to \$439,936,354, at a rate of interest varying from six to eight per cent; the assessed value of real estate at the same time was only \$370,921,446.¹

It seems that mortgages should be exempt with other personal property in the hands of the holders. As a matter of fact they are not taxed now, although legally assessable to the agent in whose hands they are left. There would be foreign favoritism if mortgages of residents were assessed under these conditions; but the assessors never go to the recorder's office to ascertain their amount, and it would not be conclusive if they did.

Exemptions by Contract.—Where there is no constitutional bar, the legislature may exempt particular parcels of

¹ Volume of Eleventh Census on Real Estate Mortgages, p. 422; Volume on Valuation and Taxation, Part II., p. 165; E. R. A. Seligman, "On the Shifting and Incidence of Taxation," pp. 137, *et seq.*; Nathan Matthews, Jr., *Quarterly Journal of Economics* IV. 339; see Iowa Revenue Commissioners' Report of 1893, p. 10, for arguments against the exemption of mortgage indebtedness.

property, or the property of particular persons or corporations from taxation, either for a specified period or perpetually; or it may limit the rate of taxation to which they shall be subjected; and such immunity or limitation inserted in the charter of a private corporation becomes a contract if there is adequate consideration.¹

The legislature, therefore, may, within constitutional limitations, bargain away the taxing power of the commonwealth, and the United States government will protect the rights of individuals established under this contract.²

Now the municipality might exercise the same privilege, if granted the power so to do in its charter or general enabling act. The legislature has not granted to cities or counties the power of exempting any person, corporation or industry from taxation, and the constitution strictly forbids it.³

¹ In the leading case of *New Jersey v. Wilson* (7 Cranch, 164), the doctrine is clearly settled that such a contract cannot be rescinded by subsequent legislatures, under the clause in the constitution of the United States prohibiting states from passing any law impairing the obligation of a contract; the circumstances of the case were as follows: in 1758 the state of New Jersey purchased the Indian title to lands in that state, and as consideration for the sale bought another tract of land as a residence for the Indians, having previously passed an Act declaring that such lands should not thereafter be subject to any tax by the state. The Indians lived upon this land until 1801, when they were authorized by Act of the legislature to sell, but no provision was made regarding taxation; later the legislature repealed the Act of 1758, and subjected the land to taxes in the hands of purchasers. They were assessed and demanded; the purchasers resisted; the Supreme Court of the United States held the later imposition of taxes unconstitutional, saying that the privilege, although for the benefit of the Indians, was annexed by the terms which created it to the land itself, and in the event of sale the privilege was material, because it enhanced the value of the land.

Cf. *Jefferson Branch Bank v. Skelly* (1861), 1 Black, 436; *Gordon v. Appeal Tax Courts*, 3 How, 133; *University v. People*, 99 U. S. 309.

² John W. Burgess, "Political Science and Comparative Constitutional Law," I, 358.

³ Art. I. Sec. 6.

Exemption of Agricultural Lands.—Land adjoining a city or incorporated town may be annexed by a majority vote of the electors in the city; but no lands thus annexed, which have not been laid off into lots of ten acres or less, and which are in good faith used for agricultural or horticultural purposes, are taxable for any city purpose; except that they must pay a highway tax as before, into the city treasury. Only Iowa and Kentucky thus exempt such lands within city limits.¹ The provision that taxes shall be uniform usually is held to bar this exemption. The economic objection to it is that vacant land is held for speculative purposes; but on the contrary, cities ought not to be allowed to annex and tax property which receives no benefit from the annexation.

Exemption of Churches.—Parsonages and churches are not taxed. Whether this exemption is advisable and constitutional is still an open question. The law does not thereby "establish a state religion;" it simply encourages good conduct and learning, as much property owned by churches is devoted to educational purposes. Of course the same privileges must be extended to each and every sect. Just at present there is a strong sentiment against the exemption, not so much emanating from non-Christians as from disunited churches. If a minister individually owns

¹ Code, Sec. 585; *Leicht v. Burlington*, 73 Ia. 29; *Perkins v. Burlington*, 77 Ia. 553, a tract of 18 acres of land occupied as a homestead, situated within the city limits, which was never platted but surrounded on all sides by land laid out into lots, streets and alleys, and which is benefited by city improvements, *held* subject to taxation for city purposes. In *Taylor v. Waverly* (Ia.), 63 N. W. 347, property annexed had always been used for agricultural purposes and was remote from the platted portion of the city, the nearest street or alley, except a public highway, being 250 rods distant; *held* the property was exempt from taxes for city purposes. An act was introduced into the last legislature applying this law to lands included within the original limits of any incorporated city or town, but it failed to pass.

realty but allows his church to use it, even though without charge, it is not exempt.¹

Exemption of Trees.—An interesting exemption is one which provides that for every acre of forest trees set out, not more than twelve feet apart and cultivated for timber, \$100 shall be exempt for ten years; and for every acre of fruit trees planted not more than thirty-three feet apart, \$50 shall be exempt for five years; provided such exemptions do not exceed one-half the value of the farm on which they are claimed.

In 1894 the exemption under this law amounted to \$5,126,673, and in 1895, \$5,017,265. In 1872, it extended to every half mile of hedge and every mile of shade trees along the public highways.²

Equalization of Valuations—Local.—At the meeting of the township or city board of equalization, on the first Monday in April of each year in the office of the township or city clerk, the board is required to decide what assessments should be changed. An alphabetical list of the names of the individuals whose assessment it is proposed thus to change is posted in a conspicuous place where the board's meetings are held, and also in each post-office in the township; and, if in the opinion of the board, any assessment should be increased, an adjourned meeting is held at least one week after posting the notices as mentioned, before final action is taken, and the notices must state the time and place of the meeting.³

¹ *Laurent v. Muscatine*, 59 Ia. 404. A priest having purchased lots with the express purpose of building a church thereon, subsequently secured a more desirable location, where he erected the church, paying for it with money secured by a mortgage on the lots first purchased; *held* the mortgaged lots are not exempt; *Nugent v. Dilworth* (Ia.), 63 N. W. Rep. 448; *North American Review*, CXXXI, 362; *Albany Law Journal*, XXIII, 347; *Chicago Legal News*, XII, 15. Taxes for religious purposes are forbidden by the state constitution, Art. I, Sec. 3.

² 14 G. A. ch. 3, Feb. 21. 1872; Code, Sec. 789.

³ Code, Sec. 229.

At the adjourned meeting, any person aggrieved by his assessment may appear in person or by agent and ask redress; if it is not granted, he may appeal to the district court and thence to the Supreme Court. This appeal must be taken within sixty days after the board adjourns. If the tax is altogether illegal, it is not necessary to appear before the board, but if one cent of it is legal, and redress is not demanded, at this, the proper time and place, there is no further remedy. It is no excuse that one did not know of the assessment until too late to make such application.¹

The appellate court becomes a new assessing body to try the issue *de novo*, and new evidence may be introduced but it cannot further increase the assessment.²

Each assessor on the first Monday in April delivers his assessment books to the township clerk for the township trustees to equalize, and after making the corrections as they require, he sends a copy as corrected to the county auditor not later than the third Monday in May.

County Equalization.—The county board of supervisors meets as a board of equalization in June, and may add a certain per cent to the aggregate valuation of all the property in the county or to any class of it, but the board can not change an individual assessment.³

The supervisors have no jurisdiction to determine the right of a municipal corporation to assess taxes and they

¹ Nugent *v.* Bates, 51 Ia. 77; Rockafellow *v.* Board, 77 Ia. 493, raising an assessment from \$15 to \$5,334 held good; Phelps *v.* Board, 84 Ia. 610. If a municipal corporation assesses property it is estopped from claiming title, except when the acts of its officers were illegal or unauthorized; Adams Co. *v.* Burlington, 55 Ia. 94.

² Ingersoll *v.* Des Moines, 46 Ia. 553, where the board of equalization of its own motion increases an assessment, no appearance before it for correction is necessary to entitle the tax-payer to an appeal; Grimes *v.* Burlington, 74 Ia. 123; Dunlieth *v.* Dubuque, 55 Ia. 558; Richards *v.* Rock Rapids, 72 Ia. 77.

³ It did equalize individual assessments under the revision; Sec. 739.

cannot be remitted on this ground.¹ When two townships are included within the corporate limits of a city and constitute but one assessorial district, the board has no authority to increase the assessment in one of the townships; but it may equalize between different assessorial districts.²

State Equalization.—The state executive committee, composed of the governor, secretary, auditor and treasurer of the state or any three of them, meets as a board of equalization on the second Monday in July; and on the first Monday in August the state auditor informs the county auditors throughout the state what percentage to change the assessment in their respective counties; the state board has no power to equalize personal property.³ It may simply add to or deduct from the aggregate valuation of the real property of any county such an amount as it may deem necessary to secure the proper valuation. It is allowed only three weeks in which to perform its duties and meets for this purpose only in odd numbered years, when real property is assessed.

Judicial Remedies.—An original action will not lie against a city for the correction of an erroneous assessment; the remedy is by application to the board of equalization.

The distinction is plainly drawn between a wholly unauthorized assessment, and one that is merely erroneous or

¹ District *v.* Moore, 39 Ia. 605.

² Getchel *v.* Supervisors, 51 Ia. 107. The board has no authority to change the assessment of moneys and credits to their full cash value, while other property is assessed at fifty per cent; Manson *v.* Heston, 83 Ia. 377; Ridley *v.* Doughty, 85 Ia. 418.

³ The Minnesota state board of equalization includes the governor, auditor, attorney-general, and one qualified elector not a member of any county board of equalization, from each judicial district, who is appointed by the governor; Rev. Stat., Sec. 1445. In the interest of uniformity a bill was introduced into the last Iowa legislature, requiring the state auditor to equalize the assessment of personal property, but it failed to pass.

excessive. The county treasurer is a proper defendant in injunction proceedings.¹

Injunction is not the proper remedy for reviewing the equalization by the board of supervisors when exceeding its powers; certiorari should be the recourse.²

¹ Rood *v.* Supervisors, 39 Ia. 444.

² District *v.* Brown, 47 Ia. 25.

CHAPTER IV.

LEVY.

Definition.—The levy is the act of fixing the number of mills to be paid in taxes on each dollar of assessed valuation.

Development.—Probably the most important work of the first territorial legislature of Iowa when organized was the passage of a revenue bill. This session, convening at Burlington during the winter of 1838-9, at once proceeded to the adoption of the system of three county commissioners, which has since developed into a board of supervisors. This commission, of which one member was elected each year, was given power to levy the general property tax. "Retail groceries" or saloons were licensed at the rate of \$100 in incorporated towns and \$50 elsewhere. The commission also issued licenses to peddlers costing from \$10 to \$50, but for selling clocks the license cost from \$100 to \$300. Ferry licenses were from \$5 to \$20 per annum. A county poll tax of \$1 was levied on every voter under sixty years of age.¹

The state tax levy of two and one-half mills was first imposed in 1848; no county was required to pay this tax into the state treasury in which it did not amount to over one hundred dollars.² The levy under the code of 1851 was made by the county judge and fixed at three mills, when no rate was directed by the executive council, which was then known as the census board. The state levy was made one and three-fourth mills in 1853, and limited to two mills by the revision of 1860.³

The state assumed the assessment, collection, and pay-

¹ Laws of Ia. Ter., First Sess., p. 401.

² First G. A. spec. sess., p. 63, Jan. 25th, 1848.

Fourth G. A., ch. 69, Jan. 22d, 1853; Rev. of '60, Sec. 710.

ment into the United States treasury of the quota apportioned to Iowa of the direct tax, levied by congress under the act of August 5th, 1861, and a tax of two mills was levied upon all real and personal property in the state according to the assessment of 1861, and collected as a separate fund for this purpose.¹ The following levies of the general property tax are authorized by the legislature at present to be made for the purposes stated:—

State	2½	mills	General Revenue.
"	$\frac{1}{10}$	"	State University.
County (h)	4	"	General Revenue.
"	1	"	Soldiers' Monument.
"	$\frac{1}{2}$	"	Soldiers' and Sailors' Relief.
"	$\frac{1}{2}$	"	Soldiers' Orphans.
" (a)			Bond and Interest.
"	1½	"	Poor House.
"	1	"	Road Fund.
" (b)			Insane.
"	3	"	Schools.
"	5	"	High School.
" (c)			Judgment.
"	5%		Railroad.
City	1	mill	Library.
"	3	mills	Library Building.
" (d)			Bridge.
"	2	"	Park.
"	5	"	Street.
"	2	"	Paving Fund.
"	1	"	Fire Department.
"	3	"	Grading Fund.
"	2	"	Sewers.
" (a)			Sinking Fund.
" (a)			Bond Interest.
" (a)			Waterworks.
" (c)			Judgment.
"	10	"	General.
"	5%		Railroad.

¹ 9th G. A. ch. I, Jan. 31st, 1862.

Township	(f)	1 to 5 mills	Road and Bridge.
"		5%	Railroad.
"	(i)		Cemetery.
"	(i)		Board of Health.
"	(c)		Judgment.
District		10 mills	School House Fund.
"	(g)		Contingent Fund.
"	(g)		Teachers' Fund.

(a) Sufficient to pay a portion of the principal and the interest on bonds.

(b) Not exceeding \$16 per month for each insane person supported by the county.

(c) To pay judgments rendered.

(d) Over any navigable boundary river of Iowa.

(e) Is levied by library trustees.

(f) May be partly paid in labor.

(g) The district contingent and teachers funds are limited to an amount equal to \$5 and \$15 per pupil respectively but are levied in mills.

(h) May be 6 mills in counties of less than 20,000 population, or by special vote.

(i) Unlimited.

State.—The executive council makes the levy of state taxes authorized by the legislature or as much thereof as is necessary.¹

County.—The entire levy of the general property tax is required by statute to be made at the regular September session of the county board of supervisors, but if it is made at the preceding meeting it will not be void.² A tax not levied when it should have been may be levied the next year.³ But the levy must be made at a legal meeting, and if, after adjourning, the board reassembles and levies a tax

¹ The total amount of state and local taxes collected in Iowa for the year 1894 was \$18,517,282.28, of which \$1,388,226.12 was state tax, \$5,538,886.52 county tax, \$548,963.97 county school tax, \$6,852,212.61 district school tax, \$418,430.21 county insane tax, \$2,871,423.67 corporation tax, \$881,340.65 special taxes; \$19,799.53 telegraph and telephone taxes. Rep. of the state Auditor, 1895, p. 100.

² Easton v. Savery, 44 Ia. 654.

³ Perrin v. Benson, 49 Ia. 325.

without following the manner prescribed in the statute it is void.¹ A record of the levy is required to be kept and its absence will overcome the *prima facie* evidence of a levy afforded by a tax deed.

MANNER.—No particular words of levy are necessary, and a motion that a certain tax “be levied” if carried is sufficient. The power cannot be delegated to a committee. The levy must be definite, and thus a “tax of $3\frac{1}{2}$ mills or so much thereof as is necessary” is void for uncertainty, but a vote “of all the law allows us” is valid.

Equality and uniformity are requisites of a legal levy, but these are not very broad classifications, as a tax is only considered “unequal” when it is “unequal” within a certain class, and property of non-residents cannot be taxed higher than that of residents.

LEVY TO PAY BONDED INDEBTEDNESS.—The board of supervisors funds and refunds the county debt, and is authorized to levy each year, in addition to ordinary taxes, a sum sufficient to pay the interest and such proportion of the principal, that will, at or before the maturity of the bonds, equal the whole amount. If the board fails or refuses to make this levy, any owner of the bonds and coupons may file them with the state auditor, and the executive council, at its next session as a board of equalization, adds to the state tax to be levied in that county a sufficient rate to realize the interest and principal due and to become due before the next levy; and each subsequent year thereafter this county bond tax is collected and paid to the owner of the bond.²

When a question involving the borrowing or expenditure of money is submitted to a vote of the people, it must be accompanied by a provision to levy a tax for its payment, in addition to the usual taxes, and no vote adopting such loan or expenditure is valid unless the tax also is adopted. The

¹ Scott v. Union Co., 63 Ia. 583.

² Code, Sec. 293.

rate of this tax may in no case be more than one per cent of the county valuation in one year. If an excess over the necessary amount is collected, the tax is not invalid but the surplus goes into the ordinary funds.

LEVY FOR SUPPORT OF THE POOR.—The expense of the poor house is paid by the county treasurer from a tax of $1\frac{1}{2}$ mills.

INSANE.—The county of the settlement of insane persons is liable for their support, although relatives may defray such expense; those without a settlement are supported at the expense of the state.

SOLDIERS.—The board of supervisors may levy a tax limited to one-half mill for the support of soldiers' orphans by "out-door relief," or in any soldiers' orphans' home in the state. If it refuses to levy this tax when such orphans are cared for in a home, the executive council may levy it in that county as a part of the state tax. The assessor is required to list each orphan child of a soldier who served in the United States army.

The board may also levy one-half mill, for the purpose of creating a fund for the relief and funeral expenses of honorably discharged indigent Union soldiers, sailors and marines, their indigent widows, and minor children not over fourteen years of age in the case of the boys, and not over sixteen in the case of the girls, having a legal residence in their county. In each county a soldiers' relief commission, consisting of three residents, two of whom are honorably discharged union soldiers, disburse this fund.

The supervisors may levy a tax of one mill for the purpose of erecting soldiers' monuments or a memorial hall in which are included the names of all the soldiers and sailors who entered the service from the county. This tax, however, must be voted on at the next general election after having been petitioned for by a majority of the members of the Grand Army of the Republic in the county. It is collected

as ordinary county revenue and expended by a commission appointed by the board of supervisors from the members of the Grand Army of the Republic.

DOG TAX.—The board of supervisors of each county, at its September session, is required to levy a tax of fifty cents on all male dogs and one dollar on female dogs, to be collected with the ordinary county revenue. This fund is kept separate to pay for the killing of sheep or other domestic animals by dogs, and if it is insufficient to pay all claims proved they are paid *pro rata*.

COUNTY POLL TAX.—The county poll tax, as introduced in 1841, was placed at fifty cents or one dollar at the option of the board of commissioners, for every white male inhabitant between the ages of twenty-one and fifty.¹

It is now fifty cents and may be required of such persons as the supervisors direct, usually males between the ages of twenty-one and forty-five.

The justification of this tax rests on the argument that it is paid by that class of persons who escape property taxes. On the other hand it is urged that it is mostly paid by poor people charged with rearing large families, increasing the burdens of life already hard to endure, and taking a large percentage of their savings.

Township.—Township trustees may levy a tax for the purchase, improvement and maintenance of cemeteries, and take such precautions as they deem advisable to preserve the public health, certifying the cost to the county board of supervisors to be collected as taxes.

ROADS.—The township trustees, at their meetings all over the state on the first Monday in April each year, having received the assessors' books, determine the tax to be levied for highways, bridges, and tools adapted to the construction and repair of highways, and for the payment of any indebted-

¹ Laws of the Third Ter. Leg. of Ia. ch. 70.

ness previously incurred for highway purposes, which must not be less than one nor more than four mills on the township valuation for that year. They decide whether any portion of this tax may be paid in labor, and if so, how much, and upon the amount that will be allowed for a day's labor, to men and teams on the highway. They do not levy this tax for cities, as the council there controls the streets.

The road supervisor should destroy any Canada thistles growing on vacant lots, and certify the expense to the county auditor, who enters it as a tax against the property to be collected by the county treasurer with other taxes. Noxious weeds may be cut twice a year by a property owner on the abutting highways, and the reasonable compensation for it may be credited on his taxes.

During the month of April the clerk makes an alphabetical list for each highway district in his township, indicating the road tax of each individual ; the amount to be paid in money is placed in a separate column, and the names of all who are required to perform two days labor as highway poll tax, are indicated. This list is delivered to the road supervisor in each highway district in the township, who is the collector of the road tax. He is not required to pay any part of it to the township clerk, except the part set aside as a general fund ; the balance must be expended for road purposes in the district where collected.

On the second Monday in November the township clerk reports to the county auditor the delinquent taxes, and they are added to the regular county list, collected and returned to the township clerk the next year.

The supervisor requires all able-bodied male residents between the ages of twenty-one and forty-five to perform two days labor of eight hours each upon the highway, between the first day of April and September each year. He must give at least three days' notice of the time and place designated to work, and then and there each person so charged must meet him with such tools and teams as he

may direct, and "shall labor diligently under his direction."

Each person liable to perform this labor, who fails to attend in person or by satisfactory substitute, or having attended spends his time in idleness or disobeys his superior, or fails to furnish to him a satisfactory excuse within five days, forfeits three dollars for each day's delinquency; and in case of failure to pay such forfeit within ten days, the supervisor may recover it in his own name by an action before any justice of the peace in the township; no property or wage is exempt from this debt and the money when collected is expended on the public highway. Instead of bringing suit the supervisor may report to the township clerk those who have not paid or worked, and he certifies the list to the county auditor to be collected with other taxes. The supervisor's compensation is two dollars per day, which is paid out of the highway fund after deducting his two days' tax. He may call out any or all able-bodied men to help make extraordinary repairs in roads or bridges, under penalty of ten dollars for refusal. This work is received in payment for the highway tax for that or any succeeding year, at the rate per day established by the trustees.¹

City.—The first general enabling act under which municipal corporations could organize, granted the majority of the council the power to levy a tax on all property in the city, not exceeding fifty cents on the hundred dollars, and to sell goods or real property for unpaid taxes. Realty might be redeemed in two years, but a penalty of fifty per cent interest per annum was added.²

¹ The revenue commission's excellent report of 1893 recommends that all road taxes be payable in cash. The chief argument for maintaining the tax payable in labor is that many would otherwise not pay it.

² February 24, 1847. Iowa City presents an interesting historical event in its attempt to levy city taxes; under its first charter, at town government was attempted, but when it began to levy a municipal tax, the citizens refused to pay it, and the town officers, disgusted at being left without financial support, dropped all their official duties. Thus for four

The city clerk of each municipal corporation at present certifies to the county auditor on or before the first Monday in September of each year, the number of mills levied by the council; the taxes are then collected by the county treasurer with the county revenue. Cities under special charters assess, levy and collect their taxes according to their charters; but only Dubuque, Davenport, Keokuk and Cedar Rapids still retain their charters, all the other older cities having reorganized under the later general enabling act.

The city council may levy a reasonable tax on dogs and other domestic animals, not included in the list of taxable property, which is collected by the marshal.

When a city has funded its bonded indebtedness the council must levy a sufficient tax to pay the interest till the next annual levy; and twenty per cent of the principal by the end of five years, forty per cent. by the end of ten years, sixty-five per cent by the end of fifteen years, and on or before the maturity of the bonds their whole amount. If the city neglects or refuses to pay the bonds, they may be deposited with the executive council, who will add to the state tax a sufficient levy to pay them.¹

No tax can be levied to pay illegal bonds, and the state

teen years the city existed as the county seat of Johnson County and the territorial capital of Iowa, without being incorporated or having any municipal organization. A special charter was issued by the General Assembly January 24, 1853, under which officers were elected for the city and performed their duties; up to this time the streets were in some places nearly impassable on account of brush and stumps; with the exception of a few hundred feet on Clinton street there were no sidewalks. Dogs and hogs ran loose and untaxed in the streets as obnoxious nuisances. On April 13th, the council enacted an ordinance to "provide for cleaning of streets, roads and sidewalks," which was soon followed by others prohibiting hogs running at large, and taxing dogs. "Iowa City," B. F. Shambaugh, p. 107.

¹ Code, par. 755. Where a tax is authorized by vote of a city or county, it must be actually levied, as the act of the electors authorizing it is not sufficient; *Iowa Land Co. v. Woodbury Co.*, 39 Ia. 172.

constitution provides that no political or municipal corporation may become indebted for any purpose to an amount in the aggregate exceeding five per cent on the valuation of its taxable property, to be ascertained by the last county tax list previous to the incurring of such indebtedness; this includes debts due as well as to become due, including bonds, warrants and all other obligations.¹ But if the corporation has money in its treasury, it may incur debts to that extent beyond the constitutional limit. Bonds issued in excess of this limitation are void even in the hands of innocent purchasers.² The portion of the debt up to the limit, and all bonds issued to pay judgments, are valid.³

LIBRARY TAX.—All cities of the first class *i. e.* those having over 15,000 inhabitants, may levy a tax not exceeding three mills, to purchase land or buildings for a free public library, and one mill for its support; the last legislature passed a law, giving to the trustees of the library the power of levying these taxes.

Schools.—Taxes are levied for school purposes by the state, county, township, city and district; at this point all these may be conveniently summarized. The school laws prior to 1840 have been outlined in chapter one.

The second session of the territorial legislature held in that year provided a system of common schools,⁴ authorizing the voters of any township to build a schoolhouse and impose for its payment a tax limited to \$500 dollars per year. The tax for fuel was paid in proportion to the number of scholars in each family and their time in school. A tax was allowed to be levied for a "bookcase," also \$10 a year for books; the limit of the tax for teachers was \$90 per year. The assessor collected these taxes, but if they were refused

¹ Const. Art. II. Sec. 3.

² McPherson *v.* Foster, 43 Ia. 48.

³ R. R. *v.* Osceola, 52 Ia. 26.

⁴ Jan. 16, 1840.

he reported them to the county treasurer. The moderator, assessor and director constituted the township board of equalization. This was the first provision for education in Iowa at public expense.

The first legislature of the state on Jan. 24th, 1847, provided that all moneys for building school-houses should be furnished by voluntary subscription. The schools were "open and free to all white persons in the district between the ages of five and twenty-five years."

In 1848, a district tax for school-houses was allowed; upon the written request of three freeholders in the district, the directors ordered an election "designating in three printed or written advertisements, set up in the most public places in the district," the time and place of the election, where the vote was given *viva voce*. The tax was assessed and collected by the clerk of the board of directors, who might sell personal property or land; and he was authorized to receive in payment of the tax, any labor or materials which might be agreed upon by him and the tax-payer.¹

The next year directors were allowed to purchase or erect school-houses, and levy a tax not exceeding in any year $1\frac{1}{2}$ per cent of the taxable property in the district; it was assessed and collected by their secretary, who posted his assessments in three public places, and if any one thought himself wrongly assessed, a meeting of the directors was called to correct it. A county school tax of not more than one mill was also authorized to be collected with the ordinary county revenue except that it was payable in cash only. All property of negroes and mulattoes was exempt from taxation for school purposes, as they had no right to attend.²

¹ Spec. Sess. First G. A., p. 76.

² Fourth G. A., ch. 101, Jan. 24, 1853; Second G. A., ch. 80, Jan. 15th, 1849. In 1851 free negroes were prohibited from immigrating to Iowa; if they did come it was the duty of the county and township officers to order them to leave the state within three days, and if they did not depart, they were subject to a fine of \$2 per day; but all free negroes then resident were permitted to remain; Third G. A., ch. 72, Feb. 5th, 1851.

The permanent school fund of the state, amounting in 1895 to over \$4,000,000.00, is apportioned among the various counties of the state at 6 per cent interest. This interest is then semi-annually apportioned among the school districts of the state in proportion to the number of persons therein between the ages of five and twenty-one years, being an average of about 50 cents each.¹

The state has solemnly pledged itself to maintain this fund inviolate; it consists of five per cent. of the net proceeds of the public lands, the proceeds of the 500,000 acres of land which were granted to the state under act of congress September 4th, 1841, proceeds from escheats and the sales of the sixteenth section in each township. The counties re-loan this fund at not to exceed 8 per cent interest to individuals on real estate security.²

The temporary school fund consists of fines and proceeds from lost goods and estrays.

The board of supervisors may levy an annual tax not exceeding five mills for a county high school; at present only one county, Guthrie, maintains such an institution, but any other county may establish one, on the petition of one-third of the electors.

The supervisors at the time of levying county taxes, add not less than one nor more than three mills for the support of schools, which is receivable in cash only. They also levy at the same time the district school tax certified to them by

¹ Twenty-third G. A., ch. 23. The state's experience in loaning this fund to individuals is indicated by worthless mortgages, known as Ead's Loans, amounting in 1879 to \$15,355.92 and which still regularly appear in the Auditor's report.

² Code, Sec. 1837; when school or university lands, which have been bought on credit, or lands mortgaged to these funds, are sold for taxes, the purchaser at the tax sale takes subject to the lien of the state; Code, par. 1385. *State v. Shaw*, 28 Ia. 67. When the state forecloses its mortgage the purchaser at the sheriff's sale takes free from prior tax liens; *Lovelace v. Berryhill*, 36 Ia. 379; *Ayres v. County*, 61 Ia. 728; *La Rue v. King*, 74 Ia. 288.

the secretary of the district school board ; but the rate in any district for the school-house fund is restricted to ten mills and the amount to the contingent fund and teachers fund must not exceed \$5 and \$15 respectively per pupil, as shown by the last report of the county superintendent.¹

Independent School District.—Any incorporated town or city containing not less than 200 inhabitants may form an independent school district and attach contiguous territory. It may be subdivided into as many wards or divisions as the directors may think proper and they may levy a ten-mill school house tax; they may also issue bonds not to run longer than ten years drawing interest not to exceed ten per cent, and limited to five per cent of the assessed valuation of the property.²

District Township.—The several sub-directors of a township constitute a board with regular meetings on the third Monday in March and September, and special meetings are called by the president or a majority of the members. This board makes the contracts, purchases, payments, and sales, necessary to carry out the vote of the district, and divide it into sub-districts ; it may adjourn a regular meeting but no tax may be levied after the third Monday in May.

There is an annual meeting of the electors of the district township on the second Monday in March where they may vote the school-house tax and direct other school matters.

Sub-directors in each district are elected on the first Monday in March; where a township comprises one sub-district there are three sub-directors; if it has two districts or more, there is one sub director in each.

The county auditor on the first Monday in April and the fourth Monday in September apportions the county school tax and

¹ The rate which may be levied to pay legal debts is unlimited; Ex rel. *v.* Directors, 20 Fed. Rep. 29.

² The school board may levy a tax to pay bonds and interest and if it fails to make the levy, the board of supervisors may do it; Code, par. 2973.

the interest of the permanent school fund to which the county is entitled, and all other moneys in the county treasury belonging to the common schools, among the several sub-districts in proportion to the number of persons between the ages of five years and twenty-one years, as shown by the last report of the county superintendent.

Enforcement.—Mandamus may compel the levy of a tax, but the discretion of the board cannot be controlled by such action, and it never has the effect of calling into existence any new authority or duty.¹

Restraint.—Where county officers are about to levy a tax to pay invalid bonds, the tax-papers may enjoin the levy. The issue of bonds may be stopped, if the action prescribed by the tax-payers is not followed.

Licenses.—Under the territory of Michigan, the county treasurer issued licenses, as the commissioners might determine, to all who sold goods, not made in the territory.²

Four auctioneers in each county were appointed, each being required to pay a tax of \$5 annually.³

At present all peddlers of merchandise not manufactured in the state are required to secure a license of some county auditor. The fees which go to the state vary from \$10 to \$75 per annum, according to the number of animals drawing the peddler's vehicle. Shows and circuses exhibiting outside of cities are licensed by the board of supervisors on payment of a fee not exceeding \$100.

The board may grant licenses, as it sees fit, to ferries and toll bridges for a term of fifty years, and these may be exclusive for ten years.⁴

¹ F. J. Goodnow, *Political Science Quarterly*, VIII, 48; High on Extraordinary Remedies, 7.

² Acts of the Fifth Leg. Council of Mich., Dec. 20th, 1834.

³ Acts of the Sixth Leg. Council of Mich., March 20th, 1835.

⁴ Code, Sec. 1003.

Cities may regulate, license and tax at their reasonable option carts, wagons, drays, coaches, hacks, conveyances, auctioneers, restaurants, taverns, shooting galleries, pawn-brokers, peddlers, circuses and theatres.¹

Liquors.—The first state legislature authorized townships to determine at the township election whether or not the county commissioners should grant licenses to sell liquors within the township.² The license was fixed in 1849 at from \$50 to \$125.³ In 1855 a prohibitory liquor law was passed and two county agents were appointed by the county judge to sell liquors for medicinal, mechanical and sacramental purposes.⁴ In 1872, the profit was restricted to 33 per cent and monthly returns to the county auditor, showing purchases and sales, were required.⁵

A constitutional amendment prohibiting the manufacture and sale of intoxicating liquors in the state passed the legislature in 1880 and 1882, was adopted at a special election in the interim as provided by law, and was declared a part of the constitution by the governor, July 29th, 1882; but on account of irregularities in entering it upon the journal of the Eighteenth General Assembly, and because of a disagreement between the amendment then adopted and the one agreed to by the Nineteenth General Assembly, the Supreme Court declared that it had not become a legal part of the constitution.⁶

The prohibitory law was maintained, but the "original package case" (*Leisy v. Hardin*, 135 U. S. 100, April 28, 1890, Gray, Brewer and Harlan, JJ. dissenting), decided that the state could not tax or restrict the sale of liquor until it

¹ Code, Sec. 463.

² Laws of Ia., First Sess., Feb. 15, 1847.

³ Second G. A., ch. 67.

⁴ Fifth G. A., ch. 45.

⁵ Fourteenth G. A., ch. 24.

⁶ *State v. Johnson*, 61 Ia. 504.

passed out of the hands of the original importer, or the original package had been broken. As original packages might be pint bottles the prohibitory law was then practically defeated. Following this decision the Wilson Bill, which passed congress in the same year, gave the states the right to regulate the liquor traffic through their police power.

The present "Mulct Law," passed in 1894, allows sales of liquors in counties, after a favorable petition signed by 65 per cent of the voters residing outside the limits of cities having over 5,000 population, has been secured; or in cities of over 5,000 population, when a favorable petition, signed by a majority of the voters, is filed with the county auditor. This does not legalize the business, but the taxes may be paid quarterly in advance, which is a bar to prosecution during that time. It levies a tax of \$600 payable semi-annually on all liquor sellers except registered pharmacists. This tax may be rebated *pro rata* if the business is not carried on over six months. The township assessor returns a list of places where liquors are sold, their occupants and owners, in December, March, June and September. If he fails to report any such place three citizens may make the report to the county auditor. This tax goes one-half to the county and half to the city, is collected by the county treasurer and is a lien upon the property so used both real and personal.

The business cannot be conducted within three hundred feet of any church or school-house, and the consent of all resident freeholders within fifty feet is necessary. Cities may levy an additional tax.¹

Fees.—The commissioners of pharmacy of the state charge \$2 for each registration, and \$5 for each examination; the state board of dental examiners charges \$1 for each registered dentist and the medical examiners charge \$10 for the

¹ Twenty-fifth G. A., ch. 62, Mch. 29, 1894.

examination and admission of physicians; the clerk of the Supreme Court charges \$1 for admission to the bar; the educational board of examiners charges \$3 for a state certificate and \$5 for a state diploma.

The state treasury received during the calendar year of 1894, as fees, \$65,479 62, of which the secretary of state paid \$15,401.43, the auditor \$33,695, the clerk of the Supreme Court \$3,279.20, the superintendent of public instruction \$905.50, the state oil inspector \$10,439.49, and the commission of pharmacy \$1,760.¹

Special Assessments.—There are, in general, two methods of special assessments; some cities levy them on specifications before the work is done, *e. g.*, Chicago and Minneapolis; but New York pays the contractor and levies the tax when the expense has been ascertained, adding the interest for its advances. The New York system is probably better, as rebates are unnecessary and no money is advanced by the tax-payers and kept out of use. Cities in Iowa may choose either method and have the power to issue bonds to pay contractors anticipating the collection of the assessments.

Any city may improve or pave streets and alleys, and construct sidewalks, permanent or temporary, assessing the expense to the abutting property.

It may also issue six per cent twenty-year bonds to pay for the improvements at the intersections of streets, and in front of alleys and other exempt property. The city may levy a tax of not more than five mills to be collected with its other taxes on all taxable property in the city for these purposes.

There is so much danger that the council and its officers may make mistakes in these assessments and taxes that the legislature has passed a general law authorizing the city council "to make all necessary orders and ordinances and take all necessary steps to correct" any alleged omission or

¹ Biennial Report of the State Treasurer, 1895, p. 126.

irregularity; and if any property is assessed too little or too much, the tax may be re-assessed or re-levied with the same force and effect of a valid original act, and overcharges may be refunded after they have been collected.¹

The cost of sewers may be assessed as a betterment tax on the abutting property or be defrayed from the city's general revenue, or the cost may be met by levying a tax not exceeding two mills in the sewerage districts. Or finally any two of these methods may be combined.

An action will not lie to recover a special assessment paid voluntarily but under protest, the collection of which might have been enjoined for irregularity.²

A water-course may be changed or a levee may be constructed by the board of supervisors, and the cost may be apportioned among the land owners according to the benefit each receives. Bonds, limited to fifty per cent. of the value of the lands in the drainage district, may be issued by the board of supervisors, and taxes may be levied for their payment on the lands benefited.

¹ Code, par. 8247, 850; V. S. Rosewater, "Special Assessments." Special assessments may be certified to the county auditor and collected by suit. *Ankeny v. Henningsen*, 54 Ia. 29.

² *Newcomb v. Davenport*, 86 Ia. 291.

CHAPTER V.

COLLECTION.

Originally.—When the territory of Iowa was organized, taxes were collected from the occupant of real estate, and he might recover them from the owner, by an action of debt, with damages not exceeding twenty per cent, and these taxes were preferred to all other claims against the property. The sheriff was the collector for the county treasurer, and if taxes were not paid by August 1st (the list was not returned till the first Monday in July), the sheriff proceeded to collect by distress and sale of the personal property of the owner or occupant. If he found no personal property, he sold the delinquent tax-payer's land on the second Monday of December. The purchaser received a certificate as at present, and if the claimant of the land did not redeem it within two years, with interest at the rate of fifty per cent per annum, together with charges and costs, the sheriff issued a deed to the holder of the certificate in the name of the territory, which vested in him an absolute estate in the premises. Married women might redeem within five years from the date of the sale, and lands of minors were redeemable till one year after they became of age. Delinquent taxes drew seven per cent interest. Orders drawn on the county treasurer were receivable, and the collector received seven per cent commission. Five per cent of the gross county revenue was set apart as a debt due the territory, to be paid over on the draft of the territorial treasurer.¹

¹ Laws of Ia. Ter., First Sess., p. 401, January 25, 1839, amended January 15, 1840. The legislature held annual sessions till the state was organized in 1846. A territorial tax of $\frac{1}{4}$ mill was levied by the legislature and collected with the county revenue in 1840. Laws of Ia. Ter., Second Sess., ch. 90.

Gradually the taxes came to be collected from the owner instead of from the occupant. Semi-annual payments of taxes were introduced in 1884. One-half may now be paid by April 1st and the second half by October 1st without any penalty. Taxes are, however, deemed delinquent on March 1st, and if the first payment is not made by April 1st, the whole amount draws interest at the rate of one per cent a month.

The county treasurer on the first day of March pays over to the cities in the county, all taxes which he has collected belonging to such corporations, and delinquent taxes thereafter received are subject to check by the city treasurers.

Up to the time of the sale, the owner may pay the taxes, interest and costs; and a lawful tender thereof to the treasurer divests him of authority to sell the land.¹

Money only is receivable for the school tax, but state warrants will pay state taxes, and county warrants county taxes. The legislature authorized county treasurers to receive United States treasury demand notes, and notes of the State Bank of Iowa, in 1862, but they were forbidden to dispose of what specie they had on hand or might collect for such notes, as they were depreciated.

Recovery.—Illegal or erroneous taxes are refunded although voluntarily paid, even after they have been apportioned or distributed among the various funds.

Taxes on the property of a partnership, assessed in two counties, cannot be recovered judicially but the remedy must be sought of the board of equalization.²

Taxes paid by one who is not the owner and who has no claim whatever upon the property cannot be recovered from one who purchases the land thereafter; But when the *bona fide* holder of a void tax deed, or one making an honest

¹ *Schenck v. Peay*, 1 Dill. 267; Code, Sec. 879.

² *Harris v. Fremont Co.*, 63 Ia. 639; *Eyerly v. Supervisors*, 81 Ia. 189; *Central Law Journal*, XX, 224.

claim to the title which has been long in litigation, who is afterward declared to have no title, pays the taxes, and the benefits accrue to the land, he is entitled to be reimbursed for the amount paid with legal interest.¹

A petition to recover taxes erroneously exacted is demurrable unless it states that a claim therefor has been presented to the board of supervisors.²

Restraint.—Injunction will be granted by a court of equity to restrain the collection of a tax which is wholly void, as for instance, when it is levied upon exempt property or under an unconstitutional law. Equity will not interpose to prevent the collection of a tax, on account of mere irregularities.

Curing Defects in Tax Proceedings.—The legislature may legalize irregular tax proceedings by general or special acts.

The List.—At its September session the board of supervisors makes the levy. The county auditor computes the respective burdens of state, county, township, district and city taxes, and before November first, he must deliver the list, which he has copied from the assessors' books, to the county treasurer. After December 31st, between the vendor and vendee the tax is a perpetual lien on the land, and the buyer thereafter, except by stipulation to the contrary, must pay the taxes.³ With this list as his authority the treasurer proceeds to collect the taxes.

Distress and Sale.—Personal property in Iowa is seldom seized for taxes. When the treasurer does distrain goods and the owner refuses to give a sufficient bond for their delivery on the day of sale, the treasurer may keep them at the owner's expense; he must give notice of the time and place of the sale within five days after the seizure, by posting

¹ Read *v.* Howe, 49 Ia. 65.

² Bibbins *v.* Clark, 90 Ia. 230.

³ Taxes are also a lien on goods transferred in bulk; 24 G. A. ch. 35.

notices in three public places in the township two weeks before the sale, but no newspaper publication is necessary. The sale must be fixed within twenty days, but may be adjourned from time to time, not exceeding five days in all. When there are no bidders it must be adjourned at least once, and notice thereof posted at the place of sale. Any surplus above the taxes, charges for keeping, and fees of the sale, is returned to the owner. In case there are no township collectors, which is discretionary with the board of supervisors, the county treasurer may appoint a deputy to conduct this sale, who receives the same fees as a constable and a commission of five per cent.

If the owner escapes with his personal property to another county the tax may be certified to the treasurer of that county to collect with an additional penalty of twenty per cent. The collector retains the penalty but forwards the balance to the county where the tax was originally payable.¹

The treasurer is not bound to seize and sell personal property, but he may sell realty for both the real and personal tax.²

Delinquent personal taxes of previous owners, which are liens on realty, should always be brought forward and entered opposite the taxes on that property.³

Notice of Sale.—The notice of the sale of land for taxes states its time and place, the amount of taxes, interest and costs, the name of the owner, and describes the several parcels to be sold. It must be published once a week for three successive weeks. The last publication must be at

¹ Code, Sec. 858, 864.

² *Garretson v. Schofield*, 44 Ia. 35. The fact that lands have been advertised for sale does not prevent a sale of personalty to pay their taxes, but if the lands have been actually sold, personalty could not then be seized; *Kessey v. Connell*, 63 Ia. 430. *Cass Co. v. Beck*, 76 Ia. 487. Any board of county supervisors, township trustees, or city aldermen may employ an attorney in collecting taxes; Code, Sec. 527; *Dillon on Municipal Corporations*, I. 479.

³ Code, Sec. 845.

least one week prior to the sale. It is also posted on the door of the court house four weeks before the sale.¹

The advertisement is equivalent to a demand and notice. But omission to include certain lands in the advertisement is not sufficient to defeat a deed made in pursuance of the sale, as the owner is bound to know that his taxes are delinquent, and the tax deed is conclusive as to the fact of advertisement.²

The Sale.—On the first Monday in December, one may see the money brokers of the county or their agents, in the county treasurer's office at ten o'clock. Now begins the chain of important technical operations, by which eventually the owner will be deprived of his property entirely, on account of his neglect to pay its taxes. This sale of land is one of the necessary steps in the collection of taxes, all of which are under the control of the board of supervisors as the chief officers of the county. The auditor and treasurer attend the sale and keep a record of it, which is receivable in evidence.³

Any person, who offers to pay the taxes due on a parcel of land for the smallest portion of it, is considered the purchaser. He pays the taxes assessed against the whole tract, and the portion which he receives is an undivided interest.⁴

1 On each advertised tract the treasurer collects twenty cents which is paid into the county treasury. If applied to by letter inclosing thirty cents he must give information of the amount of taxes due upon specified property; but if it exceeds 360 acres he is not bound to answer, unless ten cents is added for each 100 acres over 360, but the maximum fee is fifty cents. If he neglects to give this information he is liable to a forfeit of \$50 to the person wronged; Code, Sec. 873.

² Shawler v. Johnson, 52 Ia. 472; Code, par. 1382.

³ Code, Sec. 882; Chandler v. Keeler, 46 Ia. 596.

⁴ Code, Sec. 876. Poindexter v. Doolittle, 54 Ia. 52. A sale for taxes of forty acres "for fourteen acres" held void for uncertainty; Cragin v. Henry, 40 Ia. 158; Vaughan v. Stone, 55 Ia. 213; Jenswold v. Doran, 77 Ia. 692. Under the Revision when the portion constituted one-half or more of the tract, it was to be taken from the east side, dividing the land

Occasionally at a sale competition will carry bidding to such an extent that some one will offer to pay the taxes on a certain tract of land for an undivided one-ten-thousandth of it. But this can safely be done, as in the suit for partition the costs, including attorney fee, must be paid by both parties in proportion to their interests, and the land owner will rather redeem it and avoid this suit.¹

Where the homestead is assessed separately as such, it is not liable for taxes on any other tract.

A private tax sale is void and there must be an offering for bids;² but where there is an actual sale, any irregularity in its conduct or error in the recital of its *data* does not defeat the tax title.³ Each bid must be for the total amount of taxes due on one tract;⁴ except, when tracts have been passed over for two years for want of bidders offering to pay taxes, they may be sold to the highest bidder although offering less than the taxes.⁵ This sale does not divest the owner of the title; it remains in him until the deed is issued, and he may eject the trespassing holder of a tax certificate;⁶ but redemption from one tax sale will not defeat the lien of a prior sale.⁷

If the purchaser does not pay the taxes at once, the tract is re-sold.

FRAUD.—The county and its officers are forbidden to purchase any land for taxes, but the fraud of interested officers at the sale renders it only voidable.⁸ When by mis-

by a line running north and south, except town lots, which might be divided lengthwise; if the portion was less than one-half of the tract it was to be taken from the southeast corner in the form of a square; Sec. 766.

¹ Code, par. 4531-4533.

² Miller v. Corbin, 46 Ia. 150.

³ Slocum v. Slocum, 70 Ia. 259.

⁴ Shoemaker v. Lacy, 45 Ia. 422.

⁵ Soper v. Espeset, 63 Ia. 326; Code, Sec. 1361

⁶ Lake v. Gray, 35 Ia. 44.

⁷ Crowell v. Merrill, 60 Ia. 53.

⁸ Waggoner v. Mann, 83 Ia. 17. Code, Sec. 805

take or wrongful act of the treasurer, land is sold on which no tax is due, the county reimburses the purchaser for the amount paid, with interest and costs, but allows no penalty.¹

If the treasurer and auditor fail to attend any of these sales in person or by deputy they are subject to a fine of from \$50 to \$300. If they willfully sell property not subject to taxes, they are liable for all damages to the owner and to fines of from \$1,000 to \$3,000. Any sale to the county auditor or treasurer directly or indirectly is void, and subjects them to a fine of not more than \$1,000. Thus if the treasurer or auditor or their deputies bid off the land for another for compensation, the sale is invalid.²

ADJOURNMENT.—If the sale cannot be completed on the first Monday in December,³ the treasurer continues it from day to day as long as there are bidders.⁴ When all the parcels have been offered and some remain unsold for want of bidders, the treasurer adjourns the sale to some day within two months, and further adjournments are then made from time to time at intervals not exceeding two months, until the next annual sale, or until all the taxes are paid.⁵

Certificate of Purchase.—The county treasurer gives the purchaser a certificate, describing each parcel sold to him and the amount of taxes, interest and costs. The owner of the certificate may recover treble damages for waste or trespass committed by any person on the land bought, and money thus recovered must be paid to the county auditor to be held

¹ *Storm Lake Bank v. Buena Vista Co.*, 66 Ia. 128; Code, Sec. 899.

² *Everett v. Beebe*, 37 Ia. 452; *Kirk v. St. Thomas' Church*, 70 Ia. 287. But it will be good in the hands of a subsequent purchaser for value without notice of the fraud; *Ellis v. Peck*, 145 Ia. 112; or after five years, *Guthrie v. Harker*, 27 Fed. Rep. 586; Code, Sec. 884.

³ *Love v. Welch*, 33 Ia. 192; Code, Sec. 886.

⁴ *Phelps v. Meade*, 41 Ia. 470; Code, Sec. 877.

⁵ The auditor's record should show this adjournment; *Plympton v. Sapp*, 55 Ia. 195; Code, Sec. 883.

until the deed is executed. Then if the land is redeemed the money is paid to the owner, but if not redeemed to the person receiving the tax deed.

The certificate of purchase is assignable by indorsement, but notice of the transfer should be placed on file in the county treasurer's office; it is not negotiable paper and the purchaser gets no greater rights than the vendor.² The purchaser may pay taxes in subsequent years, to which the penalty also attaches, but if he does not file duplicate receipts with the auditor before redemption he is not entitled to recover such taxes from the owner of the property.³

Notice of Expiration of the Time of Redemption from Tax Sale.—Two years and nine months after the tax sale, the holder of the certificate of purchase may serve on the person in possession of the property sold and also upon the owner, if he resides in the county, notice that a deed will be granted ninety days after its completed service. Service of the notice may be made upon one first, by reading, or offering to read it, and in either case by delivering to him personally a copy at his usual place of residence, or to some member of the family over fourteen years of age; second, by taking an acknowledgment of service indorsed on the notice, dated and signed by the person served.

Service may be made on non-residents by publication in some newspaper in the county three times. Or a non-resident may file with the county treasurer a written appointment of some person in the county as his agent upon whom personal service must be made. When land is unoccupied and taxed

¹ *Phillips v. Myers*, 55 Ia. 265; Code, Sec. 3343.

² *Watson v. Phelps*, 40 Ia. 482; *Griswold v. Wilson*, 36 Ia. 156; Code, Sec. 888; *Swan v. Whaley*, 75 Ia. 623; the owner of the property may redeem by direct contract with the holder of the certificate, but must know at his peril that he is dealing with the true holder. Code, Sec. 899. *Soukup v. Union Ins. Co.*, 84 Ia. 448.

³ *Byington v. Allen*, 11 Ia. 3; Code, Sec. 889.

to an "unknown owner," no service is necessary and the deed will be granted at the expiration of three years.¹

Proof—When is Service Complete?—Now the last days of grace begin to run. In order to determine when service is complete and when the ninety days commence, an affidavit must be filed with the treasurer of the service and its mode, duly signed and verified by the owner of the certificate, his agent or attorney; it is insufficient if signed only by the publisher of the paper in which the notice was printed;² any person swearing falsely to such an affidavit is guilty of perjury.

The costs of serving the notice, whether by publication or otherwise, and the costs of the affidavit, are added to the amount necessary to redeem. No redemption will be allowed ninety days after completed service whether the deed is executed or not.³

Redemption.—Anyone may redeem who shows proof of some connection past or present with the title by deed, descent, contract or possession. If this is made out one may redeem without considering whether the real title is in him or an adverse claimant. However, if a stranger holding

¹ Notice must be given to the person in whose name the property is taxed at the time the notice is served, and not to the one who was assessed at the time of the sale; *Snell v. Ry. Co.*, 88 Ia. 442. Notice need not be served on a mortgagee, and service may be made by the holder of the certificate or any other person; *Hall v. Guthridge*, 52 Ia. 408; *Ellsworth v. Van Ort*, 67 Ia. 222; *Knight v. Campbell*, 76 Ia. 730, "unknown owner." The return of a service which fails to show when the notice was served on the one in whose name the land was taxed is void; *Carnoy v. Wetmore (Ia.)*, 90 N. W. 265; *Adams v. Burdick*, 68 Ia. 666; *Clifton Heights Land Co. v. Randell*, 82 Ia. 89.

² *Sweeley v. Van Steenburg*, 69 Ia. 696; he is not the agent of the owner by virtue of being requested to make the affidavit. Irregularities in proof are cured in five years if the notice was properly served; *Trulock v. Bertley*, 67 Ia. 602; *Bolin v. Francis*, 72 Ia. 619.

³ *Schofield v. McDowell*, 47 Ia. 129. The law in force at the time of the sale regulates redemption; *Spengin v. Forry*, 37 Ia. 242; *Myers v. Cope-land*, 20 Ia. 22.

none of the estates which may be carved out of a fee redeems, the title of the purchaser is not affected.¹

A mortgagor cannot acquire title to the prejudice of the mortgagee.² A mortgagee may pay taxes, and upon redemption being made from him by a junior lien holder, is entitled to reimbursement.³ A tax title acquired by a tenant-in-common inures to the benefit of his co-tenants.⁴

A minor or lunatic may redeem by guardian or legal representative any time before the deed is issued, or by an equitable action in a court of record within one year after disability is removed.⁵ Death removes the disability of the minor and redemption may not be made after one year from that date; and an action by one minor to redeem property inherited from another minor cannot be maintained after one year from the death of the latter.⁶

The right of redemption is assignable.⁷ The county

¹ Blackwell, *opus cit.* 704. The Wisconsin law provides that the owner, occupant or other person may redeem, but the words "other person" are held not to include a stranger, *Rutledge v. Price Co.*, 66 Wis. 39; *Adams v. Beale*, 19 Ia. 61, wife; *Byington v. Rider*, 9 Ia. 566, lessee or any holder of a recorded lien; *Lancaster v. Auditor*, 2 Dill. 478, holder of a patent title although there is outstanding a prior tax title; *Foster v. Bowman*, 55 Ia. 237; *Burton v. Hintrager*, 18 Ia. 348, heir of a mortgagee; *White v. Smith*, 68 Ia. 313, administrator of a mortgagee; *Dohms v. Mann*, 76 Ia. 723, guardian; *Seymour v. Harrison*, 85 Ia. 130.

² *Eck v. Swennumson*, 73 Ia. 423; and cases cited therein.

³ *Evans v. Burns*, 67 Ia. 179; *Manning v. Bonard*, 87 Ia. 648.

⁴ *Clark v. Brown*, 70 Ia. 139. He may purchase an outstanding tax title for his own benefit; *Alexander v. Sully*, 50 Ia. 192, and enforce contribution; *Willcuts v. Rollins*, 85 Ia. 247.

⁵ Code, Sec. 892; *Miller v. Porter*, 35 Ia. 166; but the minor in order to redeem must have been the owner at the time of the tax sale; the acquisition by a minor after the sale gives no extension; *Stevens v. Cassady*, 59 Ia. 113. The grantee of a minor has only five years in which to redeem; *Pearsons v. American Inv. Co.*, 83 Ia. 358. In Minnesota the period is two years after disability is removed; Stat. of 1891, Sec. 1558.

⁶ *McGee v. Bailey*, 86 Ia. 513; Code, Sec. 892.

⁷ *Lynn v. Morse*, 76 Ia. 665.

auditor and treasurer cannot prevent any person, who in good faith relies upon a recorded lien, from redeeming.¹

In a court of equity, redemption may be allowed for mistake or fraud after expiration of the legal time.² If land has been redeemed, but by reason of the county treasurer not having kept a record of it, a tax deed is granted it is void.³ When one redeems he receives a certificate of redemption from the county auditor which he must have countersigned by the treasurer.

Amount Necessary to Redeem.—To redeem after the tax sale, the owner must pay, in addition to the accrued taxes, interest and costs paid by the purchaser, ten per cent penalty added immediately, and ten per cent annual interest on this gross amount. Ten per cent penalty and ten per cent interest attaches also to subsequent taxes paid by the purchaser.⁴

Redemption is effectual where the owner pays the amount asked by the auditor, although it is below the required amount and is refused by the holder of the tax certificate; where the amount determined by the holder is paid his rights are terminated.⁵

Where the proper notice of expiration of time of redemption is not given, the amount to be paid for redemption

¹ Cummings v. Wilson, 59 Ia. 14.

² Noble v. Bullis, 23 Ia. 559; but not for his own mistake; Playter v. Cothran, 37 Ia. 258; Callanan v. Lewis, 79 Ia. 452.

³ Hartman v. Anderson, 48 Ia. 309.

⁴ Code, Sec. 890. This ten per cent is the same interest which by the laws of the territory was fifty per cent; under the Code of 1851 it was twenty-five per cent; and under the revision of 1860 thirty per cent. In Illinois redemption may be made within six months with twenty-five per cent penalty, from six to twelve months with fifty per cent, from twelve to eighteen months with seventy-five per cent, from eighteen to twenty-four months with one hundred per cent; Annot. Stat., Sec. 210. Taxes may be collected by an action of debt in case the statutory remedy is insufficient; Dunlap v. Gallatin, 15 Ill. 7.

⁵ Darrow v. Union Co., 87 Ia. 164; Curl v. Watson, 25 Ia. 35.

is the sum for which the land was sold with interest and penalties, and the fact that part of the taxes were paid more than five years before the time of redemption, will not relieve the owner from the obligation to pay them.¹

Redemption is complete when the owner pays the amount shown by the receipts on file,² which leaves the land as clear of the lien for taxes as it was before the assessment.³

The most liberal and benign construction is given to statutory provisions for redemption.

If the deed is issued before the ninety days expire, it is invalid.⁴

The treasurer issues the deed ninety days after completed service if the taxes are not paid, and is entitled to twenty-five cents for it; any number of parcels of land bought by a person may be included in one deed.⁵

Deed.—LIMITATION ON PURCHASER.—If the holder of a tax certificate does not secure a deed and take possession within five years from the expiration of the time of the redemption, or within eight years after the tax sale, he loses

¹ Long v. Smith, 67 Ia. 22; where the duplicate receipt for subsequent taxes, paid by the tax purchaser, is not filed the owner may redeem without paying such taxes; Kennedy v. Bigelow, 43 Ia. 74. No redemption is good when ordered by the board of supervisors for a pauper without the actual payment of money; Reeves v. Bremer Co., 73 Ia. 165.

² Slyfield v. Barnum, 71 Ia. 245.

³ Lake v. Gray, 35 Ia. 44; redemption by one lien holder inures to the benefit of all: Ellsworth v. Low, 62 Ia. 178. One deed only in 1849 was given to a purchaser no matter how many tracts he bought, and the treasurer was paid out of the county funds an amount not exceeding ten dollars for each deed; Second G. A., ch. 112, Jan. 15, 1849.

⁴ Ellsworth v. Green, 59 Ia. 622.

⁵ Code, Sec. 859; Bowers v. Hallock, 71 Ia. 218. If the deed is imperfect he should execute another; Harley v. Street, 29 Ia. 429; parol evidence may supplement its description; Judd v. Anderson, 51 Ia. 345; Roberts v. Deeds, 57 Ia. 320.

all rights under his purchase and a deed executed and recorded thereafter is null and void.¹

The holder on a tax deed is held to be in constructive possession of unoccupied land, when it is not in the actual possession of another.²

One in possession under a void deed has no title and cannot oppose the holder of a tax deed in his plea to quiet title, even after five years from the execution of the tax deed.³

LIMITATION ON OWNER.—No action for the recovery of real property sold for the non-payment of taxes may be brought unless within five years after the treasurer's deed is recorded.⁴

DEFECTS.—A tax deed will be set aside if one substantial defect is found in the proceedings,⁵ but the fact that the property, at the time of the delivery of the tax deed, was in the adverse possession of a third party, does not render the deed void.⁶

The description in the deed must be definite; thus, where it attempted to convey "the west fract. half quarter of the

¹ Code, Sec. 902, *Innes v. Drexel*, 78 Ia. 253; Code of Alabama, Sec. 606, three years; *Alexander v. Thacker*, 43 Neb. 494, five years; *Hotson v. Wetherby*, 88 Wis. 324, six years. *Nicodemus v. Young*, 90 Ia. 423; *Beedle v. Cowley*, 85 Ia. 540; *Bradley v. Brown*, 86 Ia. 359; one taking possession of land under a void tax deed is liable for rent to the owner although acting in good faith; *Strang v. Burris*, 61 Ia. 375.

² *Hintrager v. Nightingale*, 36 Fed. Rep. 847; *Strabala v. Lewis*, 80 Ia. 510; *Willcuts v. Rollins*, 85 Ia. 247.

³ *Baird v. Law*, 61 N. W. Rep. 1086; Code, Sec. 897; *Wilkin v. Wilkin*, 60 N. W. Rep. 194. After the limitation has run against the tax title, the original owner, remaining in possession, may maintain an action to quiet his title and remove the cloud; *Tabler v. Callanan*, 49 Ia. 362; but not when the holder of the tax title is in possession, *K. & D. R. R. v. Lindley*, 48 Ia. 11.

⁴ Code, Sec. 902; *Barret v. Love*, 48 Ia. 103, constitutional; *Barrett v. Holmes*, 102 U. S. 651; *McCaughan v. Tatman*, 53 Ia. 508.

⁵ *Rath v. Martin*, 61 N. W. Rep. 941; *Iowa Land Co. v. Guthrie*, 53 Ia. 383, Code, Sec. 897.

⁶ *Durham v. Hussman*, 88 Ia. 29. Any defect in the acknowledgment of the deed invalidates it; *Goodykoonts v. Olsen*, 54 Ia. 174.

N. W. quarter of section 7, in township 96 North, of range 41 West," it was held too indefinite to convey any title.¹

EFFECT.—The deed is conclusive evidence in all the courts of Iowa that the pre-requisites of the law have been complied with by the officers, from the assessment of the property to the execution of the deed inclusive. It is presumptive evidence that the taxes were properly assessed and levied, and had not been paid before the sale, that it was duly advertised, that the property was sold, and had not been redeemed.²

The grantee receives a new and perfect title in the nature of an independent grant by the sovereign authority, and takes free from any incumbrances, claims or equities connected with the former title.³

¹ Collins v. Storm, 75 Ia. 36; Smith v. Blackiston, 82 Ia. 240.

² Code, Sec. 897; Callanan v. Hurley, 93 U. S. 387. The provision as to the deed in evidence applies to both law and equity, but does not deprive any person of a remedy for actual fraud in equity jurisprudence; Singer Mfg. Co. v. Yeager, 2 McCr. 583; Taylor v. Ormsby, 66 Ia. 109; payment of taxes must be shown. Where a ring is formed at the sale by the bidders, one present in person or by agent is presumed to be a party to the unlawful proceeding and his title will be voidable; Kerwer v. Allen, 31 Ia. 578; Easton v. Mawkinney, 37 Ia. 601. Tacit understanding among purchasers not to bid against each other invalidates a sale; Johns v. Thomas, 47 Ia. 441; Jury v. Day, 54 Ia. 573. A ring sale being voidable but not void cannot be questioned after five years; Bullis v. Marsh, 56 Ia. 747.

³ Kramer v. Ricke, 70 Ia. 535. The deed is free from all tax liens unpaid at the date of the sale, Bowman v. Thompson, 36 Ia. 505; Dennison v. Keokuk, 45 Ia. 266; Bull v. Gilbert, 79 Ia. 547.

CHAPTER VI.

CORPORATIONS.

Taxation of Corporations in General.—There are in general three methods of taxing incorporated bodies, viz.: a tax on the franchise, on the capital stock, and on the real and personal property.

The question often arises as to the power of the municipality to tax shareholders living in this state, but not in the municipality, on shares in a corporation there located. Iowa cities may tax such property, under the powers of their general enabling act; they may also clearly tax resident stockholders of a foreign corporation, on the theory that shares are distinct personal property, whose situs follows the person of the owner.¹

Taxes on shares of domestic corporations, held by non-residents, have been strenuously opposed on the ground that they are personal property and, therefore, follow the situs of their owner into the other state. But a state which creates a corporation may give a situs to its stock where the corporation has its domicile.²

The state, so far as it does not interfere with interstate commerce, may tax foreign corporations doing business within its borders, or prohibit them entirely as they are not "citizens" of the United States.³

The state constitution provides that "the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."⁴

National Banks.—National bank stock is assessed at

¹ Cooley on Taxation, pp. 57, 221.

² Tallman v. Butler, Co. 12 Ia, 531; U. S. v. Ellyson, 28 Ia 370.

³ R. R. Tax Cases, 13 Fed. Rep. 722; State R. R. Tax Cases, 92 U. S. 575; Liverpool Ins. Co. v. Mass., 10 Wall. 66; Paul v. Virginia, 8 Wall 168.

⁴ Davenport v. R. R., 38 Ia. 633; Constitution, VIII, 2; Central R. R. v. Board, 67 Ia. 199; Grant v. Davenport, 36 Ia. 396.

its market value whether that be above or below par ; and such stock is considered "credits" from which the debts of the owner may be deducted ; and the value of the real estate owned by the bank is deducted from its stock, as it is assessed where located.¹

Only the shares and real estate of national banks may be assessed, under the act of Congress of June 3d, 1864. The personal property of a national bank is not liable to taxation.²

No national bank may be taxed "at a greater rate than is assessed upon other moneyed capital," but a shareholder in a bank whose capital is invested in government securities is not a shareholder in the securities and is taxable on his stock.

A national bank is not liable for taxes on shares, if it has no money or property belonging to their owner.³

Assessment of bank capital *en masse*, without mentioning the individual shareholders is void, but the bank is required to furnish a list of such owners to the assessors.⁴

Shares owned by a non-resident may be assessed where the bank is located, and they cannot be taxed in the state where he lives, although he may have the certificate of stock with him.⁵ In this case personal property, for the purpose of taxation, is separated from its owner and has a situs of its own fixed by congress.

Savings Banks.—The paid up capital of a savings bank is subject to assessment the same as other personal property,

¹ First National Bank v. Albia, 86 Ia. 28.

² Nat. State Bank v. Young, 25 Ia. 311. The property of a national bank is not liable to seizure for taxes on its shares; First National Bank v. Hershire, 31 Ia. 18; Rev. St. of U. S., Sec. 5219; Davenport v. Board, 64 Ia. 140.

³ Nat. Bank v. Hoffman, 61 N. W. Rep. 418.

⁴ Nat. Bank v. Hungate, 62 Fed. Rep. 548; C. F. Boone, "The Law of Banking," Sec. 402; U. S. Rev. St., Sec. 3407; Davenport v. Davenport, 123 U. S. 83.

⁵ Tappan v. Bank, 19 Wall. 490.

and the tax is paid by the bank and not by the individual shareholders. Its franchise, savings and deposits, and its mortgages and other securities, wherever they may be invested, are expressly exempted from further taxation.¹

Under the general banking law of 1860, taxes were required to be assessed to the corporation and not to the individual stockholder. The rate was the same as on other real and personal property. Two state bank commissioners were elected who fixed the taxable value of each state bank, and were allowed a compensation of five dollars per day and expenses, which were apportioned among the banks in proportion to their capital.²

Building and Loan Associations.—The shares of stock in building and loan associations are assessed at their cash value, to the individual owner as money and credits³

Insurance Companies.—All insurance companies doing business in Iowa, except joint stock and mutual companies organized in the state, pay into the state treasury $2\frac{1}{2}$ per cent of the gross amount of premiums received in the state, in full for all taxes, state and local. The taxes received from this source for the calendar years of 1894 and 1895 were \$116,297.74 and \$124,829.31 respectively.⁴

Under the code of 1851 one-half of this tax was for state purposes and one-half for county purposes. Each agent was required to render a list of premiums and was personally liable if he refused to swear to it.⁵

¹ Code, Sec. 1815. The amount of the capital invested in U. S. bonds should be deducted from the assessment; *Bank v. Ottumwa*, 63 N. W. Rep. 672.

² Rev. Sec. 1588.

³ Code, Sec. 1290.

⁴ Biennial Rep. of the State Treasurer, 1895, p. 118. Their property is however, taxable, but liability to policy and stockholders may be deducted from their moneys and credits, and usually exceeds them; *Equitable v. Board*, 74 Ia. 178.

⁵ Code of '51, Sec. 464. In Illinois, insurance agents must report on

Reciprocal fees which were adopted in the retaliatory act of 1872,¹ provided that when any other state imposes taxes, obligations or prohibitions on insurance companies of this state, the same obligations or prohibitions shall be imposed upon all insurance companies of that state doing business in Iowa.

The fees received from twenty-two Iowa fire insurance companies during the calendar year of 1894 amounted to \$2,972.50; from one hundred and two foreign fire insurance companies, \$21,379; from one hundred and twenty-three life, accident, fidelity and casualty companies of which forty-four were Iowa companies, \$7,209.50²

Telegraph and Telephone Companies.—The officers of each telegraph or telephone company operating a line in the state are required to furnish to the state auditor on or before the first Monday in May each year, a statement of the property owned, operated or leased in each county, including stations, wires and the average number of poles per mile.

The executive council assesses the several lines on the second Monday in July each year, at their true cash value, and determines the rate to be levied, which must not exceed the average general municipal and local taxes levied throughout the state during the previous year, and which is in lieu of all other taxes; this tax must be paid into the state treasury by May 1st, otherwise the state treasurer may collect it by distress and sale. Any line exclusively operated by a railway is not included in this assessment.³ The rate, as levied, is usually three per cent.

May 1st all premiums to the county auditor to be taxed as personal property; Annot. Stat., Sec. 308.

¹ Code, Sec. 1154.

² Auditor's Report, 1895, pp. 119-121. Foreign insurance companies pay an initial license of \$25, an annual license of \$20, and \$2 for each agent's certificate. Domestic companies pay \$10 at incorporation, an annual license of \$3, and fifty cents for each agent's certificate; Code, Sec. 1153.

³ Code, par. 2109. The Western Union paid in 1895, \$28,938, and the

Express Companies.—The real and personal property of express companies is assessable in the same manner as property of individuals, and one per cent of their gross receipts is paid to the state treasurer.¹

Railroad Aid.—Taxes not to exceed five per cent in the aggregate on the assessed valuation of any township or city, may be voted to aid any railway incorporated in Iowa for the construction of a projected line within the state.² The petition for this aid must be presented to the township trustees, signed by a majority of the resident freehold tax-payers, asking that the question be submitted to a vote. A special election is then ordered, ten days' notice of which is given, stating the tax and its conditions. The expense of the election and notices must be defrayed by the railway company. The tax may be all or partly levied the first year. The county treasurer collects the tax with the ordinary revenue, and pays it to the railway company, when the trustees certify that the conditions have been fulfilled.³

These taxes in aid of railroads were first upheld by the Iowa Supreme Court in 1857.⁴ But in 1860 it reversed this position, holding that the statute was unconstitutional and that such taxes could not be authorized, on the ground that

Postal Cable Co., \$1,246.68. The three telephone companies paid \$9,780. The total assessment of telegraph and telephone companies in 1895 was \$665,532.

¹ Code, Sec. 811; Twenty-sixth G. A., ch. 32. In Missouri the state tax is two per cent.

² Code, Sec. 2082. *Barthel v. Meader*, 72 Ia. 125; when the railway is sold to another company the tax cannot be levied. It may aid a narrow gauge railway; *Meador v. Lowry*, 45 Ia. 684; *Cantillon v. R. R.*, 78 Ia. 48; alienation after construction does not forfeit the tax.

³ The railroad receiving the tax is bound to exchange its stock for tax receipts presented in amounts of \$100. If the tax remains unused with the county treasurer one year after collection, it is considered forfeited and returned to the payers; *Twentieth G. A.*, ch. 159. *Lisle v. R. R.*, 54 Ia. 499; the tax may be paid in labor or supplies when the payer has so contracted with the railway.

⁴ *Dubuque v. R. R.*, 4 G. Gr. 1; *McMillen v. Boyles*, 6 Ia. 304.

they were not for a public purpose.¹ In 1870, it returned to the original decision, holding that such aid might be given, and this remains the law at present.²

Mandamus is the proper legal remedy to compel the taxing authorities to levy these taxes after being authorized by a vote of the people.³ If the state courts order a levy by mandamus the United States courts may restrain it by injunction.⁴

Railroad Taxation.—The first mode of taxing railways in Iowa assessed such corporations through their shareholders ; and the interests of non-residents were taxed at the terminus of the railroad in this state.⁵

In 1862, a gross receipts tax of one per cent was collected by the state treasurer, of which one-half was apportioned to the several counties in proportion to the number of miles of main track in each. This tax was in lieu of all other taxes on the road-bed, rolling stock, and necessary buildings for operating the road, but all other property real and personal was taxed where located, like the property of individuals.⁶

The state treasurer levied a tax on gross receipts in 1870 as follows : on the first \$3,000, or less per mile, one per cent, on receipts over \$3,000, and under \$6,000 two per cent ; and on the excess over \$6,000, three per cent. He collected the

¹ Stokes v. Scott Co., 10 Ia. 166; Ten Eyck v. Keokuk, 15 Ia. 486.

² Stewart v. Supervisors, 30 Ia. 9.

³ Lee Co. v. Rogers, 7 Wall. 181; Benbow v. Iowa City, 7 Wall. 313; Jones on R. R. Securities, Sec. 300.

⁴ Heine v. Commissioners, 19 Wall. 661; Angell and Ames on Corporations, Sec. 629.

⁵ Code of '51, Sec. 462; the list of the non-resident shareholders was required to be delivered to the assessor by some officer of the railroad. The treasurer of Scott county was required to pay over to the treasurers of Muscatine, Johnson and Cedar counties a portion of the tax thus collected from non-resident stockholders of the Mississippi and Missouri R. R. Co. for the year 1856, so that each of the four counties might have a part of such taxes in proportion to the number of miles constructed in each county.

⁶ Ninth G. A., ch. 173, April 8, 1862.

tax and kept one-fifth of it for state purposes, apportioning four-fifths among the counties in proportion to the number of miles of main track in each.¹

In 1872 railroads began to be assessed by the state Census Board (Executive Committee) at their cash value, the rolling stock and movable property being estimated in proportion to the amount of business in the state.²

Three railroad commissioners were first appointed by the governor in 1878, and were allowed the same salaries as at present, namely, \$3,000 each and \$1,500 for a secretary; but they certified these expenses to the executive council, to be divided *pro rata* among the several railway corporations, according to the assessed valuation of each. The executive council then certified to the board of supervisors in each county the amount due from the several railways located in the county, which was levied and collected as other railroad taxes and paid to the state by the county treasurer.³

In 1888 the commissioners became elective officers, and one is now chosen each year at the general election in November. They have general supervision of the railroads in the state and since the latter date, their salaries have been paid out of the state treasury like those of other state officers.

Railroad corporations were among the first to break away from the regular local assessment of the general property tax. In most states, as in Iowa, they are taxed at the general property rate but assessed by a special board.⁵

¹ Thirteenth G. A., ch. 106, April 12, 1870.

² Fourteenth G. A., ch. 26, April 6, 1872.

³ Seventeenth G. A., ch. 77. Sec. 8; March 23, 1878.

⁴ Twenty-second G. A., ch. 29. See F. H. Dixon's State Railway Control.

⁵ North Dakota, South Dakota, Maine, Maryland, Michigan, Minnesota, Vermont, Washington and Wisconsin tax the gross earnings. In New York they are included in the corporation tax on capital stock, which is one-fourth mill for each per cent dividend, if the amount declared has exceeded 6 per cent; or one and one-half mills if the dividends are less than 6 per cent; then there is an additional tax of four-fifths of

By the code of 1873, railroads are required to report *all their property* in the state, used in railroad operation, to the executive council, to be assessed and apportioned among the counties, townships, cities and districts according to the length of main track in each ; the taxes are collected by the county treasurers who pay to the state and to each local subdivision their respective shares.¹

These annual statements to the executive council are signed and sworn to by some officer of the road, designated by the council, and specify the number of miles owned or leased in the state, and the value per mile, the number and value of all kinds of rolling stock and property used in operating and repairing the road ; the gross earnings of the railway within and without the state ; the value of the road-bed, right of way, bridges, depots, yards, gravel beds and all other real and personal property exclusively used in operating the road ; and such other facts as the council may require. If the officer fail to make this report, the council may proceed to assess the property and add thirty per cent as penalty.

On the first Monday in March of each year the executive council assesses all the railway property in the state, except the real estate not used in operating the road. The assessment is

one per cent on gross earnings. The tax in Pennsylvania is similar to that in New York. Delaware taxes railroads 1 per cent on capital stock, 10 per cent on net earnings, \$100 on each locomotive, \$25 on each passenger car, \$10 on each freight car, and ten cents on each passenger. Connecticut imposes a tax of 1 per cent on capital stock and debt. Professor Seligman says, in his *Essays on Taxation*, that there is no method of taxation possible to be devised, which has not been applied to railroad property in some part of this country. The Illinois Central Railroad in consideration of certain grants and privileges pays 7 per cent of its gross earnings to Illinois ; Stat. Sec. 305. Illinois, Missouri and Nebraska tax railroads similarly to the plan in Iowa, but shops, materials for repairs, and stations not on the right of way are taxed where they are located ; Stat. Ill., Vol. 3, Sec. 40 ; Neb. Comp. Stat., p. 681 ; Rev. Stat. of Mo., Sec. 7732.

¹ Code, Sec. 1321.

at the true cash value, and in estimating the value of the movable property, the council takes into consideration the proportion which the business of the railway within the state bears to its business without the state.

On or before March 25th, the council transmits to each county through which any railway may run, a statement showing the length of the main track within the county and its assessed value per mile, as fixed by a *pro rata* distribution of the assessed value of the whole property. At the next meeting of the board of supervisors, they declare the length of main track lying in each city, township or lesser taxing district in the county through which the railway runs and its assessed value as fixed by the executive council, which is considered a part of the regular assessment.

This system will probably be maintained, as it favors the rural districts, which have a majority in the legislature. Thus one rural county having more miles of main track than the county where the shops and costly stations are located receives more taxes.¹

Sleeping and Dining Cars.—The railroads are required in their annual statement to show the number of sleeping and dining cars used during each month of the year, and also the number of miles in each month that they have been operated within and without the state.

The executive council assesses the average number of cars so used to each railroad, so that the assessed value of the cars bears the same proportion to their entire value, that the monthly average number of miles, which the cars

¹ "The Railway Gross Receipts Tax," F. J. Goodnow, *Political Science Quarterly*, IX, 233; the value of the franchise, which may be ascertained by deducting the actual value of the property from the capital stock, is taxable by the state granting the charter, and it may also tax the entire gross receipts. Shares are taxable by the state incorporating the railroad, although owned by non-residents; Hilliard on Taxation, p. 288. Railroad Commissioners' Rep. 1895. p. 4; there are thirty-eight roads in Iowa operating 8,486 miles of track. Railroads are liable for taxes on cars which they operate but do not own; Kennedy v. St. Louis, 62 Ill. 395.

have been operated in this state, bears to the monthly average number of miles such cars have been operated without the state.¹

A Uniform Corporation Tax on Transportation and Transmission Companies. — A Suggested Reform.—It is evident that the method of taxing corporations, except insurance and express companies, has scarcely outgrown the form of the general property tax. In fact, however, the executive council, in assessing the property of railroads, fixes the valuation at about the gross earnings for one year; thus in 1893 the assessed value was \$44,869,784 and their gross earnings were \$44,284,053. The railroads earn nearly as much in one year as the valuation of their property. It is desirable to approach as nearly as possible the tax on net earnings, which most economists agree would be the most scientific and equitable method, because it ascertains directly the ability to pay taxes. But progress must be gradual and the tax on gross earnings seems to be the first step. The rate should be about three per cent, as the taxes paid in 1894 amounted to 3.179 per cent on gross earnings. The taxes paid by railroads in that year amounted to \$1,355,625. This tax should all go to the state, and leave to the counties the state general property tax of two and one-half mills, which in 1894 amounted to \$1,388,226.² This would obviate the present difficulties, arising from counties striving to reduce their

¹ This method is constitutional; *Pullman v. Twombly*, 20 Fed. Rep. 658; Code, par. 2023. The number of miles of roads on which sleeping cars are operated on fifteen different lines in the state amount to 3,811. In 1895 the executive council assessed the value per mile for sleeping cars at from \$10 to \$120, averaging \$43. The aggregate assessed value for sleeping cars was \$155,994.

² Taxes paid now are equivalent to 13 per cent of the railroads' net earnings. In 1895 the assessed value of railroad property was \$44,376,542 or \$5,232 per mile, the gross earnings were \$55,874,445 or \$4,230 per mile. The earnings for 1894 were \$5,209 per mile and for 1893 \$5,233. *Vide* Chap. II.

assessments, as there would be no state general property tax. The needs of the state would be fully met by such a uniform tax on inheritance and the gross receipts of corporations.

CHAPTER VII.

THE INHERITANCE TAX, A SUGGESTED REFORM.¹

In primitive societies the right of bequests is not known ; it arises only long after the members of the blood and family have the right of inheritance. According to a widespread view the original system of property holding, at least of realty, was communal. The true power of testamentary disposition of property became known only to the Romans, from whom the barbarians received their notion of wills. The feudal system of primogeniture required enough of the estate to maintain military service to go to the eldest son. Liberty absolutely to devise property was only gradually acknowledged in Europe during the later middle ages. Since feudalism was abolished and the individual has become more important, the power of bequest has increased. Especially is this so in America, where a man may disinherit all his children.

On the death of the owner, although the children have no absolute right of inheritance, the state distributes the property among them. This tends to hold the family together.

The state has as much right as any one else to the whole of one's inheritance. But historically and practically the state has come to allow the heirs to have it; if there were no heirs the state would take all the property as an escheat. Moreover, according to a certain view, the government may be regarded as the silent partner with the individual in the accumulation of property. If the charge be considered a fee rather than a tax it may be upheld on the same principle

¹ This chapter was written before the last legislature met, which adopted a five per cent. collateral inheritance tax.

as an insurance premium. Finally the tax may be regarded as a charge levied to defray the cost of maintaining probate courts.¹

The tax should be made applicable to gifts *inter vivos* to take affect at death, in order to obviate evasion.

As the transfers to be taxed will be open to the public, and especially to the taxing power, it will be easy to ascertain the value of legacies.

In Chili, if the same property passes through probate twice within ten years, it is exempt the second time; in Italy the property is exempt four months after the tax is paid.

Small estates going to widows, orphans and purely charitable institutions should be exempt. The objection to the direct inheritance tax, that it falls upon orphans and widows, should be obviated by an exemption of \$25,000, so that its income would furnish their support.

The progressive rate seems defensible both in theory and practice.² Here, however, due weight must be given the possibility of discouraging the accumulation of wealth by the individual.

Where the tax is progressive, the higher rates should not apply to the whole amount, but only to the excess over the next lower class or classes; otherwise a larger inheritance might be made of less value than a smaller one.

The progressive rate on inheritances is found in the United Kingdom, Australasia, two provinces of Canada, and in several cantons of Switzerland.

Adam Smith, "the father of Political Economy," says, "there is no art which one government sooner learns from another than that of draining money from the pockets of its people." We do not want to learn this system because it will yield more money alone, but because it is a juster and

¹ "The Theory of the Inheritance Tax," Max West, *Political Science Quarterly* VIII, 426.

² "Progressive Taxation in Theory and Practice," E. R. A. Seligman, *Publications of the American Economic Association*, IX., 201.

better method of raising a portion of the necessary public revenue than the means now in use.

The English death duties began with the stamp act of 1694,¹ which placed a tax of five shillings on bequests of the value of twenty pounds or over. This uniform charge, doubled a few years later, continued until 1779, when three scales of duty were introduced. The Finance Act of 1894 levies the following taxes on the market value of the estates:—

Exceeds	£100 and under	£500	1%
"	500	"	1000 2%
"	1000	"	10,000 3%
"	10,000	"	25,000 4%
"	25,000	"	50,000 4½%
"	50,000	"	75,000 5%
"	75,000	"	100,000 5½%
"	100,000	"	150,000 6%
"	150,000	"	250,000 6½%
"	250,000	"	500,000 7%
"	500,000	"	1,000,000 7½%
"	1,000,000	"	8%

The estates under £100 are exempt; but the only debts deducted are those incurred three months before the decease of the testator, and reasonable funeral expenses; a gift of plate or furniture, not yielding any income, is not chargeable with the duty unless sold or disposed of; legacies for the benefit of the husband or wife, or the royal family, are exempt; gifts of books, pictures, coins, gems or specimens to any school or body corporate, to be preserved and not for the purpose of sale, and any fund expressly set apart to pay the duty, are exempt. The administrator is responsible for the duty.²

As we have no income tax, the inheritance tax is doubly inviting, as compared with the same tax in England, because

¹ 5 and 6 W. & M. c. 21.

² L. R. 31 Stat. 53; 57 Vict. c. 30; July 31, 1894.

there both the income tax and the inheritance tax are very prominent in the budget.¹

The Federal government, during the last war, found a fruitful source of revenue in taxing all lineal and collateral heirs except husband and wife from one to five per cent.²

The state inheritance tax went into effect in Illinois, July 1st, 1895, and it is yet too early to discover what revenue it will yield. It imposes a tax of one per cent on estates over \$20,000 going by will, intestate or gift, to take effect after death or made in contemplation of death, to a father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law or lineal descendant; two per cent on estates over \$2,000 going to an aunt, uncle or their lineal descendants; to all other persons the rate is three per cent on less than \$10,000, four per cent from \$10,000 to \$20,000, five per cent from \$20,000 to \$50,000, and six per cent on estates over \$50,000; but no estate of less than \$500 is taxed. The rate is levied on the fair market value as ascertained by appraisers appointed by the county judge, and any person dissatisfied with the valuation may appeal to the county court. It is a lien on the real estate so passing. The tax is due on the death of a decedent, and draws six per cent interest from that time, but if paid within six months, no interest is charged, and a discount of five per cent is allowed. The executor pays the tax to the county treasurer, who retains a commission of two per cent, paying the balance into the state treasury.

¹ C. F. Bastable, *Economic Journal*, VI, 300.

² U. S. Stat. at L. XIII, 223; XIV, 98; XVI, 256. The fiscal importance of the inheritance tax is shown by the following receipts from this source in 1894, namely: Great Britain and Ireland, \$53,609,975; France, \$39,873,305; Belgium, \$3,800,000; Italy, \$7,030,000; Prussia, \$1,140,000; Norway, \$121,500; Russia, \$2,000,000; Geneva, \$203,800; Bern, \$78,470; Victoria, \$1,328,068; New South Wales, \$829,932; South Australia, \$124,635; New York, \$1,786,218; Pennsylvania, \$1,111,121; Massachusetts, \$236,368; Connecticut, \$91,130; Maryland, \$114,009; Delaware, \$1,232; West Virginia, \$1,004.—From Max West, "The Inheritance Tax," p. 133.

In Missouri the rate of the collateral inheritance tax is five per cent on estates less than \$10,000, and seven and one-half per cent on the excess over that amount. Property conveyed to educational, charitable and religious institutions is exempt.

The New York tax is one per cent on direct inheritances, and five per cent on those going to collateral heirs.

The collateral inheritance tax, varying from two and one-half to seven and one-half per cent, is found in sixteen commonwealths, namely: California, where it was imposed in 1893; Connecticut, 1889; Delaware, 1869; Illinois, 1887; Iowa, 1896; Louisiana, 1828; Maine, 1893; Maryland, 1845; Massachusetts, 1891; Missouri, 1895; New Jersey, 1892; New York, 1885; Ohio, 1893; Pennsylvania, 1826; Tennessee, 1891; and West Virginia, 1887. It existed in Alabama from 1848 to 1868; North Carolina, 1847 to 1884; Virginia, 1844 to 1884; and was declared unconstitutional in Michigan in 1894; Minnesota, 1875; New Hampshire in 1878 and Wisconsin in 1890.

In conclusion the hope may be expressed that there may be some who will herein find more or less important information concerning a subject which, by our form of government, is thrust into the life of every one, whether he consents or not; he must not only pay taxes, but has a voice in determining what they shall be and how they shall be obtained.

There was formerly a school of economists which taught that an old tax is the best, and that the people will accommodate themselves to it. But there are now certain objects and means of revenue, as, for instance, inheritances and incomes, not new by any means, but which have not been utilized in the state. Nothing is sacred merely because it is covered with the moss of ages. The inheritance and corporation taxes would go far to replace the state general property tax, thus removing the chief cause of the lack of uniform assessments, which is now the most flagrant evil in our state finances.

APPENDIX I.

OUTLINE OF THE GOVERNMENT OF IOWA.

- 1542, Spain, Fernando De Soto discovers the Mississippi Valley in search for gold, and Spain claims all America by right of discovery which the Papal bull confirms.
- 1673, France, Father James Marquette and Louis Joliet, from the French settlements on the St. Lawrence, visit Iowa.
- 1682 Robert de la Salle visits the Mississippi Valley, unsuccessfully attempts to colonize it, and calls it Louisiana in honor of Louis XIV.
- 1712 Anthony Crozat receives the territory and introduces the laws and usages of Paris.
- 1717, La Compagnie d' Occident under John Law obtains a grant to the territory, sends colonists to the mines of Missouri, and founds New Orleans; paper money is cut in various shapes, indicating different denominations, for those who cannot read; but the scheme fails in 1720.
- 1732, The king declares trade free in the territory.
- 1762, Spain, Louisiana ceded to Spain and the capital of Upper Louisiana is established at St. Louis in 1764. Imports and exports are taxed 6 per cent, direct inheritances 4 per cent.
- 1786, Julien Dubuque, an enterprising Canadian, discovers the lead mines in Northeastern Iowa, and in 1788 by a formal council with the Indians received 140,000 acres of land.
- 1800, France, Louisiana ceded to Napoleon by the treaty of St. Ildefonso.
- 1803, U. S. Louisiana ceded to United States for \$15,000,000.

- 1804, District of Louisiana is attached to Indiana Territory; Gen. William Henry Harrison, Governor; capital, Vincennes. Acts of March 26th, 1804, and March 3d, 1805; U. S. Stat. at L. II, 283,331.
- 1805, Territory of Louisiana; capital, St. Louis. Act of June 4th, 1812; U. S. Stat. at L. II, 743.
- 1808, Ft. Madison established, but abandoned in 1813, being reduced to the last extremities by famine, Indians and the British.
- 1812, Territory of Missouri; capital, St. Louis. Act of March 6th, 1820, U. S. Stat. at L. III, 545. State government in Missouri began Sept. 18th, 1820.
- 1820, No local government or organized administration in Iowa.
- 1834, Territory of Michigan; capital, Detroit. Act of July 28th, 1834; U. S. Stat. at L. 701.
- 1836, Territory of Wisconsin; capitals, Belmont, Wis., and Burlington, Ia. Act of July 3d, 1836. U. S. Stat. at L. V. 10; Acts of the First Legislative Assembly at Belmont, Oct. 1836; Winter session 1837-8, and special session, June, 1838, at Burlington.
- 1838, Territory of Iowa; capitals, Burlington, till 1841; Iowa City till 1857. Act of June 12th, 1838; U. S. Stat. at L. V. 235.
- 1846, State of Iowa; capitals, Iowa City, and Des Moines since 1857. Act of Dec. 28th, 1846; Stat. at L. IX. 52, 117. But the machinery of state government had been started by an election of state officers and a meeting of the First General Assembly on Nov. 30th, 1856.

BIBLIOGRAPHY.

- Albany Law Journal.* Vol. xxiii. p. 347.
- Ames, John H. "The Taxation of Personal Property."
- Ames, John H. "Local Free Trade."
- Angell, J. K. and Ames, Samuel. "Treatise on the Law of Private Corporations."
- Annotated Statutes of Illinois, 1896.
- Auditor's Report, 1895. Iowa.
- Bastable, C. F. *Economic Journal.* Vol. vi. p. 300.
- Biennial Report of the State Treasurer, 1895. Iowa.
- Blackwell, R. I. "A Practical Treatise on the Power to sell Land for the Non-Payment of Taxes."
- Boone, C. F. "The Law of Banking."
- Burgess, John W.. "Political Science and Comparative Constitutional Law."
- Central Law Journal.* Vol. xx. p. 224.
- Chicago Legal News.* Vol. xii. p. 15.
- "Code of '51." Iowa.
- Compiled Statutes of Nebraska. 1895.
- Constitution of Iowa.
- Cook, W. W. "Treatise on Stock and Stockholders and General Corporation Law."
- Cooley, T. M. "The Law of Taxation."
- Dillon, J. F. "Law of Municipal Corporations."
- Dixon, F. H. "State Railway Control."
- Droppers, G. *Quarterly Journal of Economics.* Vol. vi, p. 492.
- Eleventh Census of the United States.
- Ely, R. T. "Taxation in American States and Cities."
- England. Law Reports, Statutes, *passim*.
- Ensley, Enoch. "The Tax Question, an Introduction to the Study of Sociology."
- Goodnow, F. J. *Political Science Quarterly.* Vol. viii. p. 48; ix. p. 233.
- Herriott, Hon. John. Report on the Condition of the Treasury. 1896.
- High, J. L. "Treatise on Extraordinary Legal Remedies."
- Hill, J. A. *Journal of Economics.* Vol vi, p. 225.

- Hilliard, Francis. "Law of Taxation."
 Laws of the Legislative Council of Michigan.
 Laws of the Territory of Michigan.
 Laws of the Territory of Wisconsin.
 Laws of the Territory of Iowa.
 Laws of the General Assembly of Iowa.
 Matthews, Nathan. *Quarterly Journal of Economics*. Vol. iv
 p. 339.
 McClain's Annotated Code of Iowa. 1888.
North American Review. Vol. cxxxi. p. 362.
 Report of the Iowa Revenue Commission.
 Report of the Iowa Railroad Commissioners.
 Report of C. F. Adams, W. B. Williams, and J. H. Oberly on Tax-
 ation of Railroads.
 Revised Statutes of Minnesota. 1894.
 Revised Statutes of Missouri. 1889.
 Revision of 1860. Iowa.
 Rosewater, Victor. "Special Assessments."
 Schwab, J. C. "History of the New York Property Tax."
 Scott County, Records of.
 Seligman, E. R. A. "Essays on Taxation,"
 Seligman, E. R. A. "On the Shifting and Incidence of Taxation."
 Seligman, E. R. A. "Progressive Taxation in Theory and Prac-
 tice." *Publications of the American Economic Association*.
 Vol. ix. p. 201.
 Shambaugh, B. F. "Iowa City."
 Shambaugh, B. F. "The Claim Association of Johnson County,
 Iowa."
 Smith, Adam. "Wealth of Nations."
 Supreme Court Reports of Iowa.
 United States Supreme Court Reports.
 United States Circuit Court Reports.
 United States Statutes at Large.
 Walker, Francis. "Double Taxation."
 White, Horace. Appendix to Cossa's Taxation.
 West, Max. *Political Science Quarterly*. Vol. viii. p. 426.
 West, Max. "The Inheritance Tax."
 Worthington, T. K. "Historical Sketch of the Finances of Penn-
 sylvania."

In accordance with the regulations of the University Council there is appended hereto a statement of the educational institutions attended, of degrees and honors received by the author, and his other publications.

EDUCATIONAL INSTITUTIONS ATTENDED.

Drake University, Des Moines, Iowa; from September 1887, to June 1892, five full years.

State University of Iowa, Iowa City, Iowa; from September 1892, to October 1895 continuously.

Columbia University, New York City; from October 1895, to June 1896; where the following courses were pursued and examination passed thereon before the Faculty of Political Science, May 30th, A. D. 1896:

Historical and Practical Political Economy, 3 hours, two terms, Prof. Mayo-Smith.

Science of Finance, 2 hours two terms, Dr. West.

Financial History of the U. S., 2 hours, second term, Mr. Hatch.

Railroad Problems, 2 hours, second term, Mr. Crowell.

Economic Theory—Statics, 2 hours, first term, Professor Clark.

Economic Theory—Dynamics, 2 hours, second term, Professor Clark.

Communitistic and Socialistic Theories, 2 hours, first term, Prof. Clark.

Seminarium in Finance, 2 hours bi-weekly, two terms, Dr. West.

Physical Geography and Anthropology, 2 hours, first term, Dr. Ripley.

Anthropology, 2 hours, second term, Dr. Farrand.

Statistics and Sociology, 2 hours, first term, Professor Mayo-Smith.

Statistics and Economics, 2 hours, second term, Professor Mayo-Smith.

General Sociology, 2 hours, first term, Professor Giddings.

Evolution of the Family, 2 hours, second term, Professor Giddings.

Pauperism, 2 hours, first term, Professor Giddings.

Crime and Penology, 2 hours, second term, Professor Giddings.

Municipal Politics, 2 hours, second term, Mr. Kelly.

Work in Statistical Laboratory, *passim*, Professor Mayo-Smith.

DEGREES RECEIVED.

- B. A. June 1892, Drake University, Des Moines, Iowa.
LL. B. June 1894, State University of Iowa, Iowa City, Iowa.
M. A. June 1894, State University of Iowa, Iowa City, Iowa.

HONORS AWARDED.

Gold Medal "For Excellency in German" June 19, 1891, Drake University, Des Moines, Iowa.

Junior Scholarship, Prize of \$35. For highest grades during Junior Year, 1891, Drake University, Des Moines, Iowa.

University Fellow in Political Science, 1894, State University of Iowa Iowa City, Iowa.

Instructor in Woodrow Wilson's "The State," 1895, State University of Iowa, Iowa City, Iowa.

Librarian of the Law Department, and assisting Chancellor Emlin McClain, from April 1894 to October 1895, State University of Iowa, Iowa City, Iowa.

University Scholar in Finance, 1895-6, Columbia University, New York City.

Editor of Graduate Studies for Columbia University, 1896.

Secretary, Treasurer and Auditor of the Casey Savings and Loan Association, Casey, Iowa, 1896.

Cashier Citizens Bank, Casey, Iowa, 1894-5-6-7.

Township Clerk, Thompson township, Guthrie County, Iowa, 1896.

Member American Academy of Political and Social Science, Philadelphia, 1897.

OTHER PUBLICATIONS.

1895, Catalogue of the Hammond Historical Law Collection, 8vo. 52 pp.
Published by the University, Iowa City, Iowa.

